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ABSTRACT

Title I of the Elementary and Secondary Education Act (ESEA) of 1965 (with its reauthorizations) is designed to help disadvantaged children meet challenging content and performance standards. Part A of Title I provides financial assistance through State educational agencies to local education agencies (LEAs) to meet the educational needs of children who are failing or are at risk of failing to meet a state's standards in schools, children living in areas with high concentrations of low-income families, and children in local institutions for delinquent and neglected children. This document is a guide to help state and local agencies use Part A funds to support the coordination of Part A with other ESEA programs. The guide includes the following chapters: (1) State Educational Agency Allocation of Title I Funds to Local Educational Agencies for School Year 1996-97; Local Educational Agency Identification and Selection of School Attendance Areas and Allocation of Title I Funds to Those Areas or Schools; (2) Schoolwide Programs; (3) Targeted Assistance Schools; (4) Serving Preschool Children; (5) Parental Involvement; (6) Professional Development; (7) Providing Services to Eligible Private School Children; (8) Uses of Funds; and (9) Fiscal Requirements. Twenty-one examples illustrate the use of funds. (SLD)

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ED 403 340

TITLE I, PART A POLICY GUIDANCE

IMPROVING BASIC PROGRAMS OPERATED BY LOCAL EDUCATIONAL AGENCIES



**U.S. DEPARTMENT OF EDUCATION
Office of Elementary and Secondary Education
Compensatory Education Programs**

April 1996

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Office of Educational Research and Improvement
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INTRODUCTION



INTRODUCTION

The Improving America's Schools Act of 1994 (P.L. 103-382) reauthorized the Elementary and Secondary Education Act of 1965 (ESEA). The purpose of the reauthorized ESEA is to improve teaching and learning for all children to enable them to meet challenging academic content and student performance standards. The reauthorized ESEA complements the Goals 2000: Educate America Act and the School-to-Work Opportunities Act by supporting state and local education reform efforts and promoting coordination of resources to improve education for all students.

Title I of the ESEA is designed to help disadvantaged children meet challenging content and student performance standards. Part A of Title I provides financial assistance through State educational agencies (SEAs) to local educational agencies (LEAs) to meet the educational needs of children who are failing or most at risk of failing to meet a State's challenging content and student performance standards in school attendance areas and schools with high concentrations of children from low-income families and in local institutions for neglected or delinquent (N or D) children.

Title I, Part A supports all of the National Education Goals:

1. All children in America will start school ready to learn.
2. The high school graduation rate will increase to at least 90 percent.
3. All students will leave grades 4, 8, and 12 having demonstrated competency over challenging subject matter including English, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography, and every school in America will ensure that all students learn to use their minds well, so they may be prepared for responsible citizenship, further learning, and productive employment in our nation's modern economy.
4. U.S. students will be first in the world in mathematics and science achievement.
5. Every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.
6. Every school in the United States will be free of drugs, violence, and the unauthorized presence of firearms and alcohol, and will offer a disciplined environment conducive to learning.
7. The nation's teaching force will have access to resources for the continuing improvement of their professional skills and the opportunity to acquire the

knowledge and skills needed to instruct and prepare all American students for the next century.

8. Every school will promote partnerships that will increase parental involvement and participation in promoting the social, emotional, and academic growth of children.

STATUTORY PURPOSE OF THE PROGRAM

The purpose of Title I, Part A is to enable schools to provide opportunities for children served to acquire the knowledge and skills contained in the State's challenging content and student performance standards that all children are expected to meet.

Part A embraces fundamental strategies to address the needs of the children served:

- ▶ A schoolwide focus on improving teaching and learning.
- ▶ Flexibility at the local level in tandem with clear accountability for results.
- ▶ More focused targeting of resources on the neediest schools.
- ▶ Stronger partnerships between schools and communities to support the achievement of children served.

The new Part A supports new roles for schools, LEAs, and States. Schools are provided much more flexibility--and responsibility--for determining how to spend their Part A resources, and many more schools are now able to combine most of their resources to support comprehensive reform through schoolwide programs. LEAs play a critical role through providing technical assistance, coordination of services, and high-quality professional development. States anchor the program by developing challenging academic standards and aligned assessments, linking Title I, Part A with their overall education reform efforts, and still ensuring proper and efficient administration and use of Title I, Part A funds.

PURPOSE OF THIS GUIDANCE

The guidance in this document applies to programs under Part A of Title I (basic program operated by LEAs). It does not impose requirements beyond those in the ESEA and other applicable federal statutes and regulations. While SEAs may wish to consider the guidance in this document in developing their own guidelines and standards, they are free to develop alternative approaches that are consistent with applicable federal statutes and regulations. In other words, this document contains acceptable but not exclusive guidance concerning Title I. Compliance with the guidance in this document will be deemed by department officials,

including the Inspector General, as compliance with the applicable federal statutes and regulations. This guidance replaces all prior nonregulatory guidance for Title I, Part A programs.

CONTENT OF GUIDANCE

The guidance includes several chapters, each with its own contents cover sheet. Each chapter has a footer on the right bottom corner with the chapter name. Where noted, some chapters have attachments such as a Federal Register notice or a Department-issued memorandum. Furthermore, as appendices to this guidance, we have included the Title I statute, the Title XIV statute (General Provisions), and the Title I regulations. This guidance has been developed to accommodate additional examples as the new law is implemented and new practices are documented. The chapters included in this guidance are as follows:

- **State Educational Agency Allocation of Title I Funds to Local Educational Agencies for School Year 1996-97; Local Educational Agency Identification and Selection of School Attendance Areas and Allocation of Title I Funds to those Areas or Schools**
- **Schoolwide Programs**
- **Targeted Assistance Schools**
- **Serving Preschool Children**
- **Parental Involvement**
- **Professional Development**
- **Providing Services to Eligible Private School Children**
- **Uses of Funds**
- **Fiscal Requirements**

This guidance uses a variety of strategies to clarify statutory or regulatory requirements, including the incorporation of many examples. *The examples provided in this document should not be viewed as the "only" or even the "best" way to address particular statutory or regulatory requirements.* They are provided to help practitioners consider the range of options available, and to stimulate thinking about teaching and learning in the context of local needs and resources. The Department recognizes that effective practices, whether similar to

ACRONYMS USED IN THIS DOCUMENT

AFDC	Aid to Families with Dependent Children
CAI	Computer Assisted Instruction
EDGAR	Education Department General Administrative Guidelines
ESL	English as a Second Language
FTE	Full Time Equivalent
FY	Fiscal Year
GED	General Education Diploma
IDEA	Individuals with Disabilities Education Act
LEA	Local Educational Agency
LEP	Limited English Proficient
N or D	Neglected or Delinquent
PPA	Per Pupil Allocation
PTO	Parent-Teacher Organization
SEA	State Educational Agency
SWP	Schoolwide Program
TAS	Targeted Assistance School

**BASIC PROGRAMS IN LOCAL
EDUCATIONAL AGENCIES**

**State Educational Agency Allocation of Title I Funds to Local
Educational Agencies for School Year 1996-97**

**Local Educational Agency Identification and Selection of School
Attendance Areas and Allocation of Title I Funds to those
Areas and Schools**



BASIC PROGRAMS IN LOCAL EDUCATIONAL AGENCIES

State Educational Agency Allocation of Title I Funds to Local Educational Agencies for School Year 1996-97

Local Educational Agency Identification and Selection of School Attendance Areas and Allocation of Title I Funds to those Areas or Schools

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Federal Register Notice - October 10, 1996 [Notice of guidance
for requesting waivers under Part A for schools under State-ordered
or court-ordered desegregation plans]

Memorandum - Use of Free and Reduced Price Lunch Data for
Title I Purposes

INTRODUCTION

This guidance updates earlier preliminary guidance issued by the Department on May 26, 1995 and is based on the final regulations published in the Federal Register on July 3, 1995. The revisions in this document address how local educational agencies (LEAs) allocate funds to school attendance areas within the school district, including the allocation of resources for services to private school children. The guidance concerning how State educational agencies (SEAs) allocate Title I, Part A funds to LEAs within the State is not being revised at this time. The Department is in the process of revising guidance on within-State allocation procedures for school year 1996-97. That part of the guidance will be completed soon after final action on the fiscal year (FY) 1996 appropriation has taken place. The FY 1996 appropriation, especially if less than last year, will affect how the Department and States allocate Title I funds for the 1996-97 school year because of the 100 percent hold-harmless provision contained in the statute.

This document outlines specific steps in the allocation process and provides examples illustrating how certain procedures may be carried out. The examples provided should not be regarded as exhaustive or limiting. SEAs and LEAs are free to develop alternative approaches that are consistent with the Title I statute and regulations, but may be more in keeping with their particular needs and circumstances. Therefore, this document contains illustrative but not necessarily exclusive guidance concerning Title I allocation requirements.

SEA ALLOCATION OF TITLE I FUNDS TO LEAS FOR SCHOOL YEAR 1995-96

STATE ADMINISTRATION §200.60(a) of Regulations

1. Compute the maximum amount an SEA may reserve from Title I funds for State Administration by multiplying the total State allocation for Part A LEA Grants under Section 1002(a) of Title I, Part C Migrant Education program under Section 1002(c), and Part D, Subpart 1 State agency Neglected or Delinquent (N or D) program under Section 1002(d) by 1 percent. Note that no funds may be reserved from Capital Expenses under Section 1002(e) and School Improvement funds under Section 1002(f). The maximum amount that may be reserved is the greater of 1 percent of the allocations or \$400,000. Following are examples of how to compute the maximums:

Example I - 1 Percent

Program	State Allocation	Maximum Reserve 1 Percent
Part A LEA Grants		
Basic Grants	\$88,588,632	
Concentration Grants	7,285,841	
Part C Migrant Program	472,992	
Part D, Subpart 1 State Agency N or D Program	761,985	
TOTAL	\$97,109,450	\$971,095

Example II - \$400,000

Program	State Allocation	1 Percent	Maximum Reserve
Part A LEA Grants			
Basic Grants	\$11,350,333		
Concentration Grants	544,595		
Part C Migrant Program	5,743,305		
Part D, Subpart 1 State Agency N or D Program	170,859		
TOTAL	\$17,809,092	\$178,091 ¹	\$400,000

One percent is less than \$400,000, so SEA may reserve no more than \$400,000.

2. After determining the maximum total a State may reserve for State Administration in Step 1, compute the maximum amount the SEA may reserve for State Administration from each of the State allocations and the amount up to the maximum that the State will reserve from each of Parts A, C, and D allocations. Following are examples of how to compute the amount from each allocation to be reserved:

Reservation based on 1 percent maximum: The 1 percent maximum applies to each of the four State allocations as well as to the total of the allocations. If the SEA reserves less than 1 percent, the SEA is not required to reserve proportionate amounts from the State's Parts A, C, and D allocations. However, the amounts reserved from Basic and Concentration Grants must be proportionate (see Example I).

Example I - Maximum of 1 Percent May Be Reserved

		Maximum ¹		Amount Reserved by SEA	
Program	State Allocation	Percent	Amount	Percent ²	Amount
Part A LEA Grants					
Basic Grants	\$88,588,632	1.00 %	\$885,886	1.00 %	\$885,886
Concentration Grants	7,285,841	1.00	72,858	1.00	72,858
Part C Migrant Program	472,992	1.00	4,730	0.95	4,493
Part D, Subpart 1 State Agency N or D Program	761,985	1.00	7,620	0.50	3,810
TOTAL	\$97,109,450	1.00	\$971,094		\$967,047

¹ Maximum amount that SEA may reserve from each State allocation is 1 percent.

² Amount reserved may be less but not more than the maximum percentage. An SEA is not required to reserve proportionate amounts from the State allocations under Parts A, C, and D but the amounts from Basic Grants and Concentration Grants must be proportionate.

Reservation based on \$400,000 maximum: In this case the SEA must reserve proportionate amounts from each of the State allocations. To compute the maximum amount that the SEA may reserve from each allocation, divide \$400,000 by the total of all four State allocations. The resulting percentage is applied to each of the State allocations to determine the maximum amount that may be reserved from each allocation (see Example II).

Example II - Maximum of \$400,000 May Be Reserved

Program	State Allocation	Maximum ¹		Amount Reserved by SEA	
		Percent	Amount	Percent ²	Amount
Part A LEA Grants					
Basic Grants	\$11,350,333	2.25 %	\$254,933	1.97 %	\$223,067
Concentration Grants	544,595	2.25	12,232	1.97	10,703
Part C Migrant Program	5,743,305	2.25	128,997	1.97	112,872
Part D, Subpart 1 State Agency N or D Program	170,859	2.25	3,838	1.97	3,358
TOTAL	\$17,809,092	2.25	\$400,000	1.97	\$350,000

¹ In this example, \$400,000 was divided by \$17,809,092, which equals 2.25 percent.

² In this example, the SEA reserves less than the maximum amount: \$350,000 is divided by \$17,809,092 to equal 1.97 percent.

SCHOOL IMPROVEMENT
§200.60(b) of Regulations

If funds are appropriated under Section 1002(f) of Title I, each SEA will receive an allocation under for School Improvement. In addition, an SEA may, and in some cases is required to, reserve funds from its State allocations for Title I, Part A LEA Grants under Section 1002(a), Part C Migrant Education program under Section 1002(c), and Part D, Subpart 1 State agency N or D program under Section 1002(d). An SEA must make available from funds received under Section 1002(f) or reserved from its State allocations no less than \$200,000 to carry out school improvement activities.

1. Compute the maximum amount an SEA may reserve from Title I funds for School Improvement by multiplying the total of the State allocations for the above three programs by 0.5 percent. However, if this amount plus the amount received under Section 1002(f) is less than \$200,000, the SEA must reserve a higher amount in order to bring total State School Improvement funds up to \$200,000.

Note that no funds may be reserved from Capital Expenses under Section 1002(e) of Title I or from School Improvement funds under Section 1002(f).

In States where the Section 1002(f) funds are at least \$200,000, the SEA may reserve additional funds up to the 0.5 percent maximum (see Example I). If the Section 1002(f) funds are less than \$200,000, the SEA must reserve additional funds to bring the total of the reserved funds plus the Section 1002(f) funds to at least \$200,000; the SEA may reserve funds above the amount needed to reach \$200,000 up to 0.5 percent (see Example II). If the total of the Section 1002(f) funds plus the 0.5 percent maximum reserve is not sufficient to equal the \$200,000 minimum, the SEA must reserve additional funds to bring the total up to \$200,000 (see Example III).

Example I - Section 1002(f) Allocation Is \$200,000 or More
(Reservation from State allocations is optional)

Program	State Allocation	Maximum Reserve
Part A LEA Grants		
Basic Grants	\$88,588,632	
Concentration Grants	7,285,841	
Part C Migrant Program	472,992	
Part D, Subpart 1 State Agency N or D Program	761,985	
TOTAL	\$97,109,450	
Maximum Reserve (total allocations x .005)		\$485,547
Amount available for School Improvement:		
Section 1002(f) allocation		335,000 ¹
Optional reservation from State allocations		<u>485,547</u>
Maximum amount available for School Improvement		820,547

No funds must be reserved for School Improvement

Example II - Section 1002(f) Allocation Is Less than \$200,000 but 0.5 Percent Reserve Is Sufficient to Make \$200,000 or More Available for School Improvement

Program	State Allocation	Maximum Reserve
Part A LEA Grants		
Basic Grants	\$15,000,000	
Concentration Grants	5,000,000	
Part C Migrant Program	600,000	
Part D, Subpart 1 State Agency N or D Program	300,000	
TOTAL	\$20,900,000	
Maximum Reserve (total allocations x .005)		\$104,500
Amount available for School Improvement:		
Section 1002(f) allocation		195,000
Reserve from State allocations		<u>104,500</u>
Total		299,500

The SEA must reserve \$5,000 (\$200,000 - \$195,000).

Example III - Section 1002(f) Allocation Is Less than \$200,000 and 0.5 Percent Reserve Is Not Sufficient to Make \$200,000 Available for School Improvement

Program	State Allocation	Maximum Reserve
Part A LEA Grants		
Basic Grants	\$11,350,333	
Concentration Grants	544,595	
Part C Migrant Program	5,743,305	
Part D, Subpart 1 State Agency N or D Program	170,859	
TOTAL	\$17,809,092	
Maximum Reserve (total allocations x .005)		\$89,045
Amount available for School Improvement:		
Section 1002(f) allocation		61,186
0.5 % reserve from State allocations		<u>89,045</u> ¹
Total		150,231
Additional amount SEA must reserve for School Improvement		<u>49,769</u> ¹
Maximum amount available for School Improvement (reserved funds plus Section 1002(f) allocation)		\$200,000

The 0.5 percent reserve is not sufficient, when added to the Section 1002(f) allocation, to make \$200,000 available for School Improvement. Thus, the SEA must reserve more than 0.5 percent, that is, \$138,814 (\$89,045 plus \$49,769).

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2. Determine the actual amount that the SEA will reserve from each State allocation for School Improvement. The SEA must reserve proportionate amounts from Basic and Concentration Grants but is not required to reserve proportionate amounts from its Parts A, C, and D allocations (see Example I below).

In States where the Section 1002(f) funds are at least \$200,000 but the State is opting to reserve additional funds, the SEA may not reserve more than 0.5 percent from any allocation (see Example I on page 5). In States where the Section 1002(f) allocation plus the 0.5 percent reserve is sufficient to meet the \$200,000 minimum, the SEA also may not reserve more than 0.5 percent from any allocation (see Example II on page 5). In States where the Section 1002(f) allocation plus the 0.5 percent reserve is not sufficient to meet the \$200,000 minimum, the SEA must reserve at least 0.5 percent from each allocation and will need to reserve a higher percentage from at least some of the allocations in order to meet the \$200,000 minimum (see Example III on page 6).

Example I - Section 1002(f) Allocation is \$200,000 or More
(\$200.60(b)(1) and (2)(i) of Regulations)

Program	State Allocation	Maximum ¹		Amount Reserved by the SEA	
		Percent	Amount	Percent ²	Amount
Part A LEA Grants					
Basic Grants	\$88,588,632	0.5 %	\$442,943	0.5 %	\$442,943
Concentration Grants	7,285,841	0.5	36,429	0.5	36,429
Part C Migrant Program	472,992	0.5	2,365	---	---
Part D, Subpart 1 State Agency N or D Program	761,985	0.5	3,810	---	---
TOTAL	\$97,109,450				

¹ Maximum amount that SEA may reserve from each State allocation is 0.5 percent.

² In this example, the SEA reserved less than the maximum allowed for the State. It is not required that proportionate amounts be reserved from each of the State allocations under Parts A, C, and D, as long as no more than 0.5 percent is taken from any allocation and the amounts reserved from Basic Grants and Concentration Grants are proportionate.

**Example II - Section 1002(f) Allocation Is Less Than \$200,000 but 0.5 Percent Reserve
Is Sufficient To Make \$200,000 or More Available for School Improvement
(\$200.60(b)(2)(ii)(A) of Regulations)**

Program	State Allocation	Maximum ¹		Minimum ²		Amount Reserved by SEA ³	
		Percent	Amount	Percent ²	Amount	Percent	Amount
Part A LEA Grants							
Basic Grants	\$15,000,000	0.5 %	\$75,000	0.02 %	\$3,588	0.48 %	\$72,000
Concentration Grants	5,000,000	0.5	25,000	0.02	1,196	0.48	24,000
Part C Migrant Program	600,000	0.5	3,000	0.02	144	0.02	144
Part D, Subpart 1 State Agency N or D Program	300,000	0.5	1,500	0.02	72	0.02	72
TOTAL	\$20,900,000		\$104,500		\$5,000		\$96,216
Available for School Improvement:							
Section 1002(f) allocation			195,000		195,000		195,000
Reserve from State allocations			<u>104,500</u>		<u>5,000</u>		<u>96,216</u>
Total			\$299,500		\$ 200,000		\$291,216

¹ Maximum for each allocation is 0.5 percent because this reserved amount, when added to the State's Section 1002(f) allocation, is over \$200,000.

² The minimum amount an SEA must reserve is \$5,000 (Section 1002(f) allocation of \$195,000 subtracted from \$200,000). Proportionate amounts do not have to be reserved from each allocation under Parts A, C, and D to make up the minimum as long as proportionate amounts are reserved from Basic Grants and Concentration Grants.

³ In this example, less than 0.5 percent, but more than the \$5,000 minimum, was reserved. Proportionate amounts do not have to be reserved from each allocation under Parts A, C, and D, but proportionate amounts from Basic Grants and Concentration Grants must be reserved.

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Example III - Section 1002(f) Allocation Is Less Than \$200,000 and 0.5 Percent Reserve Is Not
Sufficient to Make \$200,000 Available for School Improvement
(\$200.60(b)(2)(ii)(B) of Regulations)

		Reserve 0.5 % of Each Allocation ¹		Additional Funds Required ²		Amount that Must Be Reserved	
Program	State Allocation (1)	Percent (2)	Amount (3)	Percent ³ (4)	Amount ³ (5)	Percent (6)	Amount ⁴ (7)
Part A LEA Grants							
Basic Grants	\$11,350,333	0.5 %	\$56,752	0.4 %	\$47,447	0.9 %	\$104,199
Concentration Grants	544,595	0.5	2,723	0.4	2,277	0.9	5,000
Part C Migrant Program	5,743,305	0.5	28,716	---	---	0.5	28,716
Part D, Subpart 1 State Agency N or D Program	179,859	0.5	899	---	---	0.5	899
TOTAL	\$17,818,092	0.5	\$89,090		\$49,724		\$138,814
Available for School Improvement:							
Section 1002(f) allocation			61,186				61,186
Reserve from State allocations			<u>89,090</u>		<u>49,724</u>		<u>138,814</u>
Total			\$150,276		\$49,724		\$200,000

¹ SEA must reserve maximum of 0.5 percent from each State allocation.

² SEA must reserve additional funds because \$200,000, including Section 1002(f) funds, is not available for School Improvement. The SEA may, but is not required, to reserve proportionate amounts from each allocation under Parts A, C, and D to make up these additional funds, except the amounts reserved from Basic Grants and Concentration Grants must be proportionate.

³ In this example, the additional funds (\$49,724) required to make \$200,000 available were reserved from Basic and Concentration Grants only. To determine proportionate amounts for Basic and Concentration Grants, the additional amount required (\$49,724) was divided by the sum of the total allocations for Basic and Concentration Grants (\$11,844,928). The percentage was applied to the Basic Grant and Concentration Grant allocations.

⁴ Column 7 is the sum of columns 3 and 5.

BASIC GRANTS

In most cases the SEA will distribute Basic Grants to eligible LEAs by suballocating each county's allocation (after adjusting for funds reserved for State Administration and School Improvement) to eligible LEAs within that county (see Section II). However, in States in which a large number of LEAs overlap county boundaries, the SEA may apply for permission to allocate the total State allocation (after adjusting for State Administration and School Improvement) to LEAs without regard to the county allocations (see Section I). In States where counties and LEAs are coterminous, the SEA simply adjusts the county allocation to subtract SEA reserves for State Administration and School Improvement (see Section III).

I. Distribution of State Basic Grant Allocation Among Eligible LEAs Within the State Without Regard to County Allocations

An SEA in a State in which a large number of LEAs overlap county boundaries may apply to the U.S. Secretary of Education (Secretary) for authority to make Basic Grant allocations directly to LEAs without regard to counties (Section 1124(a)(2)). If an SEA has requested and received approval from the Secretary, the following steps should be followed to determine LEA allocations. This authority does not apply to Concentration Grant allocations.

1. Determine amounts and percentages to be reserved by the SEA for State Administration and School Improvement. (See guidance on reserving funds for State Administration and School Improvement.)
2. Adjust the allocation shown at the end of the county allocation printout for Part D, Subpart 2 funds to reserve funds for State Administration and School Improvement.

Example

Part D, Subpart 2 Allocation on Printout	\$918,747
Deductions:	
State Administration (1 percent)	9,187 ¹
School Improvement (0.5 percent)	<u>4,594</u> ²
Subtotal	13,781
Amount available for Part D, Subpart 2 Grants	\$904,966

¹ Percentage must agree with the percentage reserved by the SEA from Basic Grants for State Administration.

² Percentage must agree with the percentage reserved by the SEA from Basic Grants for School Improvement.

3. From the total State allocation for Basic Grants, subtract the following amounts to determine the amount that remains available to distribute directly to LEAs:

- Amount reserved for State Administration;
- Amount reserved for School Improvement; and
- Part D, Subpart 2 funds as adjusted in Step 2.

Example

Total State allocation	\$99,708,370
Deductions:	
State Administration (1 percent)	(997,084)
School Improvement (0.5 percent)	(498,542)
Part D, Subpart 2	<u>(904,965)¹</u>
Subtotal	1,400,591
Total funds available for LEAs	\$97,307,779

¹ Amount shown on county printout (\$918,747) adjusted to reserve funds for State Administration and School Improvement.

4. Identify eligible LEAs. To be eligible, an LEA must have at least 10 formula children¹ (not including children in local institutions for delinquent children). If an LEA contains two or more counties in their entirety, the SEA must allocate funds to each county as if each county were a separate LEA.
 5. Add the count of formula children for each eligible LEA in the State (including children from low-income families and children in local institutions for neglected children).
- Reminder: Do not include counts for ineligible LEAs and do not include children in local institutions for delinquent children.
6. Divide adjusted State allocation (the amount determined under Step 3) by State total formula children in Step 5 to arrive at an amount per formula child.
 7. Multiply the amount per formula child times the number of formula children in each eligible LEA to determine each LEA's Basic Grant allocation.
 8. Compute the hold-harmless allocation for each LEA by subtracting the amount generated by

¹ "Formula children" refers to the count of children ages 5 through 17 years of age from low-income families and the number of children residing in local institutions for neglected children that the SEA uses to allocate Basic and Concentration Grant funds to LEAs.

delinquent children in school year 1994-95 from each LEA's 1994-95 Basic Grant allocation and multiplying the balance by 85 percent. Each eligible LEA is guaranteed an allocation that is not less than 85 percent of its 1994-95 Basic Grant allocation, without regard to the amount generated in 1994-95 by children in local institutions for delinquent children.

Example

School Year 1994-95	Allocation
LEA:	
Total Basic Grant allocation	\$15,000,000
Amount for delinquent children	<u>- 1,500,000</u>
Subtotal	13,500,000
	<u> X .85</u>
School year 1995-96 hold-harmless allocation	\$11,475,000

9. If an LEA's allocation in Step 7 is less than the hold-harmless allocation in Step 8, increase the LEA's allocation to the hold-harmless amount and ratably reduce the allocation for all other LEAs in the State that are above 85 percent. Repeat this step, if necessary, until all LEAs receive allocations that are equal to 85 percent or more of their 1994-95 Basic Grant allocations (without regard to the amount generated by children in local institutions for delinquent children).

II. Distribution of County Basic Grant Allocations Among Eligible LEAs

Adjust County Allocations

1. Determine the total amount to be reserved by the SEA for State Administration and School Improvement (see guidance on State Administration and School Improvement). Add these amounts and subtract from the State's total Basic Grant allocation.
2. From the State's total Basic Grant allocation, subtract county allocations for all 85 percent counties. These are the counties as shown on the county allocation printout for 1995-96 that are held harmless at 85 percent (last column on county allocation printout) of their 1994 Basic Grant allocations, without regard to funds generated on behalf of children in institutions for delinquent children.
3. Ratably reduce the allocation on the printout for all counties above 85 percent to the amount of the State allocation remaining after funds are withheld under Steps 1 and 2. For this purpose, treat the Part D, Subpart 2 allocation shown at the end of the county allocation printout as a county.
4. Check to make sure that the ratable reduction did not cause additional counties to fall below the 85 percent hold-harmless. Each county, other than Part D, Subpart 2 funds, must receive no less than 85 percent of its 1994-95 Basic Grant allocation, without regard to the amount for delinquent children. Compute the county hold-harmless by multiplying the 1994 county allocation shown on the printout by 85 percent. (Note, the 1994-95 county amounts shown in the county printout factor out children in local institutions for delinquent children.) If a county's allocation in Step 3 is less than the hold-harmless amount in Step 4, increase the county's allocation to the hold-harmless amount and ratably reduce the other counties that are above 85 percent.
5. Repeat Step 4 until all counties receive allocations equal to 85 percent or more.

Distribute County Basic Grant Allocations to LEAs Within the County

6. Identify eligible LEAs. To be eligible, an LEA must have at least 10 formula children (not including children in local institutions for delinquent children).
7. Add the formula children count (including children from low-income families and in institutions for neglected children) for all eligible LEAs in the county. If an eligible LEA overlaps a county boundary, the SEA must make, on a proportionate basis, a separate allocation to the LEA from the county allocation for each county in which the LEA is located.

Reminder: Do not include counts for ineligible LEAs and do not include children in local institutions for delinquent children.

8. Divide adjusted county allocation (determined under Steps 1-5) by the total formula children count (number derived in Step 7) to determine the amount per formula child for the county.
9. Multiply the amount per child times the number of formula children in each eligible LEA to determine the LEA's Basic Grant allocation.
10. Compute the hold-harmless allocation for each LEA by subtracting the amount generated by delinquent children in school year 1994-95 from each LEA's 1994-95 Basic Grant allocation and multiplying the balance by 85 percent. Each eligible LEA is guaranteed an allocation that is not less than 85 percent of its school year 1994-95 Basic Grant allocation without regard to the amount generated in 1994-95 by children in local institutions for delinquent children.

Example

School Year 1994-95	Allocation
LEA:	
Total Basic Grant allocation	\$15,000,000
Amount for delinquent children	- 1,500,000
Subtotal	13,500,000
	X .85
School year 1995-96 hold-harmless	\$11,475,000

11. If an LEA's allocation in Step 9 is less than the hold-harmless allocation in Step 10, increase the LEA's allocation to the hold-harmless amount and ratably reduce the allocations of all other LEAs in the county that are above 85 percent. Repeat this step, if necessary, until all LEAs receive allocations that equal 85 percent or more of their 1994-95 Basic Grant allocations (without regard to the amount generated in 1994-95 by children in local institutions for delinquent children).

Note: If an adjusted county allocation is not sufficient to give LEAs in the county their hold-harmless allocations, the SEA may use funds from the amount reserved from Part D, Subpart 2.

III. Determining Basic Grant Allocations When Counties and LEAs Are Coterminous

Follow Steps 1 through 5 in instructions for adjusting county allocations under II. **Distribution of County Basic Grant Allocations among Eligible LEAs.**

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CONCENTRATION GRANTS

Unlike Basic Grants, SEAs must generally suballocate each county's Concentration Grant allocation to eligible LEAs within that county and may not allocate funds without regard to county allocations (see Section I). The only exception to this rule is for those States receiving a State minimum allocation under Section 1122(a)(1). These States may allocate funds to LEAs without regard to the county allocations or they may suballocate the county allocations to eligible LEAs within each county (see Section II).

I. Distribution to Eligible LEAs on a County-by-County Basis

Adjusting County Allocations

1. From total State Concentration Grant allocation, subtract amounts reserved by the SEA for State Administration and School Improvement.
2. Subtract from State allocation up to 2 percent for eligible LEAs in ineligible counties (Optional).
3. Ratably reduce all county allocations shown on the printout to the amount remaining after funds are reserved under Steps 1 and 2. For this purpose, treat the Part D, Subpart 2 allocation shown at the end of the county allocation printout as a county.

Distribute Each County Concentration Grant Allocation to Eligible LEAs Within the County

4. Identify eligible LEAs. To be eligible, the number of formula children used to compute a Basic Grant allocation for an LEA must exceed 6,500 or the number must exceed 15 percent of the total children in the LEA ages 5 through 17.

Reminder: Do not include children in local institutions for delinquent children.

5. Add formula children count for all eligible LEAs. If an eligible LEA overlaps a county boundary, the SEA must make, on a proportionate basis, a separate allocation to the LEA from the county allocation for each county in which the LEA is located.
6. Divide the adjusted county allocation, determined in Step 3, by the total formula children count for eligible LEAs under Step 5 to determine the amount per formula child for the county.
7. Multiply the amount per child times the number of formula children in each eligible LEA to determine the LEA's Concentration Grant allocation.
8. In an eligible county with no eligible LEAs, identify those LEAs in which either the number or percentage of formula children exceeds the average number or percentage of those children in the county.
 - Divide the adjusted county allocation determined under Step 3 by the total formula children count for the LEAs identified above to determine the amount per formula child.

- Multiply the amount per formula child by the formula child count in each LEA identified above to determine the LEA's Concentration Grant allocation.

II. Distribution to LEAs in a State Receiving a Minimum Allocation

A State receiving a minimum allocation has two options for determining LEA Concentration Grant allocations:

1. The State may follow the same procedures outlined under I. **Distribution to Eligible LEAs on a County-by-County Basis.** Before beginning, an SEA must distribute unassigned funds for State distribution shown at the top of the county allocation printout proportionately among each eligible county and the unassigned funds for Part D shown at the top of the county allocation printout to the Part D allocation shown at the end of the county allocation printout; or
2. The State may allocate Concentration Grant funds without regard to the county allocations. Under this option, the following steps must be followed:
 - A. Reserve the appropriate amounts from State's Concentration Grant allocation for State Administration and School Improvement and subtract from the State allocation.
 - B. Adjust the Part D, Subpart 2 total allocation to reserve appropriate amounts for State Administration and School Improvement and subtract from the State allocation.

Example

Part D, Subpart 2 Allocation on Printout	\$194,530
Deductions:	
State Administration (1 percent) ¹	(1,945)
School Improvement (0.5 percent) ²	<u>(973)</u>
Subtotal	2,918
Amount available for Part D, Subpart 2 Grants	\$191,612 ¹

¹ Percentage must agree with the percentage reserved by the SEA from Concentration Grants for State Administration.

² Percentage must agree with the percentage reserved by the SEA from Concentration Grants for School Improvement.

- C. Identify those LEAs as eligible in which either the number or percentage of formula children exceeds the average number or percentage of those children in the State.
- D. Add the number of formula children in LEAs identified in Step C.
- E. Divide balance of State allocation after amounts are reserved under Steps A and B by total formula children in Step D to arrive at an amount per child.

- F. Multiply the amount per child times the formula children count for each eligible LEA to determine the LEA's Concentration Grant allocation.

**PART D, SUBPART 2 - LOCAL PROGRAMS FOR CHILDREN
IN INSTITUTIONS FOR DELINQUENT CHILDREN**

1. Determine which LEAs are eligible to receive grants. The SEA must award grants to LEAs with high numbers or percentages of youth residing in locally operated (including county-operated) correctional facilities for youth (including institutions and community day programs or schools that serve delinquent children and youth). The SEA has flexibility in establishing criteria to determine which LEAs have high numbers or percentages of such children.
2. An SEA may distribute Part D, Subpart 2 funds to eligible LEAs on a formula or discretionary basis.
3. If the SEA chooses to make grants on a formula basis, the following procedure could be used:
 - A. Add the amounts available for Part D, Subpart 2 from Basic Grants and Concentration Grants after funds are reserved for State Administration and School Improvement.
 - B. Add the number of children in correctional facilities in LEAs with high numbers or percentages of children determined under Step 1.
 - C. Divide the available Part D, Subpart 2 funds by the number of children in Step B to arrive at an amount per formula child.
 - D. Multiply the number of formula children in each LEA by the amount per formula child to determine the LEA's grant.
 - E. Notify the LEA of its eligibility and grant amount.
4. If grants are made by the SEA on a discretionary basis, the SEA needs to establish procedures for notifying LEAs of their eligibility as determined under Step 1 and set priorities for funding that are used as the basis for making awards.

QUESTIONS AND ANSWERS

Children to be Counted

Q1. What data must an SEA use to allocate funds to LEAs?

- A. An SEA must count the number of children 5 through 17 years of age from low-income families and the number of children residing in local institutions for neglected children.

Q2. What low-income data may the SEA use to allocate Basic Grant, Concentration Grant, and Targeted Grant funds to LEAs?

- A. The SEA may use any one of the following to obtain counts of children from low-income families:
- o Factors in the Federal formula, which include census poverty data, data on children in families above poverty receiving payments under the program of Aid to Families with Dependent Children (AFDC), and data on foster children.
 - o Alternative data that an SEA determines best reflect the distribution of children from low-income families and that are adjusted to be equivalent in proportion to the total number of children counted under Section 1124(c) of Title I (excluding N or D children).
 - o Data that more accurately target poverty.

An SEA's flexibility in selecting the low-income data allows the SEA to use data more current or accurate than the census counts the Department uses to determine county amounts. Although SEAs possess broad discretion in selecting these data, they must further the purposes of Title I, Part A by directing funds to high-poverty areas. If an SEA decides to use data that are different from those used in the county allocation formula, the SEA must ensure that it is using the best available data on the number of children from low-income families.

Q3. May an SEA use a variety of sources of low-income data within the State to distribute the various county allocations among LEAs?

- A. No. In determining the number of children from low-income families in its LEAs, the SEA must use the same measure of low-income throughout the State.

Q4. May an SEA use a combination of low-income factors if these data are used consistently for allocation purposes throughout the State?

- A. Yes. For instance, a State might choose to use both decennial census data and current free-lunch data. The SEA must weight the data, however, so that LEA allocations are not determined on the basis of duplicate counts of children.

Neglected Children

Q5. If an LEA is unable or unwilling to provide services to children in local institutions for neglected children, may it retain the funds that were allocated on the basis of these children?

A. No. If an LEA is unwilling or unable to provide services to neglected children, the SEA must reduce the LEA's allocation by the amount generated by the neglected children.

Q6. May the SEA transfer these funds to another LEA?

A. Yes. These funds may be assigned to another State agency or LEA that agrees to assume educational responsibility for the neglected children.

Q7. May the SEA retain these funds?

A. Yes. If the SEA assumes educational responsibility for the neglected children, it is entitled to the funds generated by these children.

Q8. If neither the SEA nor another agency is willing to assume educational responsibility for neglected children, what happens to the funds?

A. The SEA must reduce the LEA's allocation by the amount that was based on neglected children. These funds would lapse and not be available for reallocation to other LEAs.

Q9. If an institution closes and the children are transferred to an institution in another LEA, must the SEA transfer the funds to the LEA in which the children now reside?

A. Yes. The SEA must adjust the allocations of the two LEAs to reflect the transfer.

Statewide Distribution

Q10. Under what circumstances may SEAs allocate funds directly to LEAs without regard to county allocations determined by the Secretary?

A. In any State in which a large number of LEAs overlap county boundaries, the SEA may apply to the Secretary for the authority to make Basic and Targeted Grant allocations directly to LEAs without regard to counties. In its application to the Secretary, the SEA must identify the data on children from low-income families it will use to allocate funds to LEAs and provide assurance that:

o Allocations will be based on data approved by the Secretary; and

o The SEA has established procedures through which an LEA dissatisfied with the determination by the SEA may appeal directly to the Secretary for a final determination.

Q11. May an SEA allocate Concentration Grants directly to LEAs without regard to counties?

- A. An SEA may make allocations directly to LEAs without regard to counties only if it is a State receiving a minimum Concentration Grant allocation from the Secretary.

Special Circumstances

Q12. Are there special circumstances that allow an SEA to make adjustments when determining final LEA allocations?

- A. Yes. An SEA may adjust allocations it makes to LEAs for Basic Grants and Concentration Grants where (1) an LEA serves a substantial number of children within the same geographic area as another LEA and (2) an LEA is merged or consolidated, or a portion of the district is transferred to another LEA.

Q13. How must an SEA treat LEAs that contain two or more counties in their entirety?

- A. Section 1124(c)(2) of Title I requires that an SEA treat each county as if it were a separate LEA. The LEA in turn must distribute to schools in each county within the LEA a share of the LEA's total grant that is no less than the county's share of the population counts used to calculate the LEA's grant.

Basic Grants

Q14. What data does an SEA use to determine whether an LEA has 10 formula children to qualify for Basic Grants?

- A. In determining whether an LEA qualifies for Basic Grants, the SEA uses the count of children ages 5 through 17 years of age from low-income families **that it has selected to use** to allocate funds to LEAs plus the number of children residing in local institutions for neglected children.

Concentration Grants

Q15. For 1995-96 are SEAs required to use the count of children to determine LEA eligibility and allocate funds for Concentration Grants as they use to allocate Basic Grant funds?

- A. Yes. To determine LEA eligibility and to allocate Concentration Grant funds, SEAs must use the same count of children used to allocate Basic Grant funds and determine eligibility.

Q16. If an LEA overlaps county boundaries and one of the counties is eligible, how does the SEA determine the LEA's eligibility to receive Concentration Grant funds and the amount of such funds for the LEA?

- A. An LEA's eligibility is determined based on its total number of formula children, including those in all counties in which the LEA is located. The LEA is eligible if the number exceeds 6,500 or 15 percent of all children in the LEA. If the eligible LEA is located in part in an eligible county and in part in an ineligible county, the LEA is entitled to a proportionate amount of the eligible county's allocation based only on its number of formula children in that county compared to the total number of formula children in all eligible LEAs in the county. The

children in the part of the LEA located in the ineligible county would not generate funds for the LEA.

Q17. Is an SEA required to reserve 2 percent of its Concentration Grant allocation for eligible LEAs that are located in ineligible counties?

A. No. This is an SEA option. The SEA may choose to reserve 2 percent, an amount less than 2 percent, or no funds at all.

Q18. If an SEA reserves Concentration Grant funds, must it distribute the reserved amount among all eligible LEAs in the State that are located in ineligible counties?

A. No. The SEA may rank order these LEAs according to the number or percentage of formula children and distribute the reserved funds among the selected LEAs it plans to serve in rank order based on their counts of formula children.

Q19. Is there an LEA hold-harmless provision for Concentration Grant funds for 1995-96?

A. No. Section 1122(c)(2) of Title I provides a hold harmless of 100 percent of the previous year's amount for 1996-97 only.

Hold-Harmless Provisions

Q20. If an LEA loses eligibility for Basic Grants in 1995-96, does the hold-harmless provision apply?

A. No. An LEA must be eligible in order for the hold-harmless provision to apply.

Reallocation

Q21. How does an SEA reallocate funds?

A. Section 1126(c) of Title I requires that an SEA reallocate Part A funds on a timely basis to LEAs in the State that need additional funds in accordance with criteria established by the SEA. Funds available for reallocation may include:

- o Excess Part A funds available from an LEA that: (1) is not participating in the Title I LEA program; (2) has had its allocation reduced because it failed to meet the maintenance of effort requirements in Section 14501 of ESEA; (3) has carryover funds that exceed the 15 percent limitation in Section 1127 of Title I; or (4) has excess funds for other reasons; or
- o Funds that an SEA has recovered after determining that an LEA has failed to spend Part A funds in accordance with the law.

Waivers

Q22. May the provisions related to the allocation of Basic and Concentration Grant funds to LEAs be waived?

- A. No. Section 14401(c) of ESEA prohibits the Secretary from waiving any statutory or regulatory provisions related to the allocation or distribution of funds to States, LEAs, or other recipients of funds under ESEA.

LEA IDENTIFICATION AND SELECTION OF SCHOOL ATTENDANCE AREAS AND ALLOCATION OF TITLE I FUNDS TO SCHOOL ATTENDANCE AREAS AND SCHOOLS

Section 1113 of Title I contains the requirements for identifying eligible school attendance areas and selecting those eligible areas that will participate in Title I, Part A. It also contains the requirements for allocating Part A funds to participating areas. The following points summarize these requirements:

General Selection Requirements

1. An LEA must rank all of its school attendance areas in rank order of poverty.
 - An LEA must use the same measure of poverty for:
 - Identifying eligible school attendance areas.
 - Determining the ranking of each area.
 - Determining the allocation for each area.
 - The LEA must select a poverty measure from the following options:
 - Children ages 5-17 in poverty counted in the most recent census data approved by the Secretary.
 - Children eligible for free and reduced-price lunches under the National Free School Lunch Act.
 - Children in families receiving assistance under the Aid to Families with Dependent Children (AFDC) program.
 - Children eligible to receive medical assistance under the Medicaid program.
 - A composite of any of the above measures.
 - An LEA must rank school attendance areas based on the percentage (not the number) of low-income children counted.
2. After an LEA has ranked all of its school attendance areas by poverty, the LEA must serve, in rank order of poverty, its areas above 75 percent poverty, including any middle schools or high schools.
3. Only after an LEA has served all of its areas with a poverty rate above 75 percent may the LEA serve lower-ranked areas. The LEA has the option to (1) continue on with the districtwide ranking or (2) rank remaining areas by grade span groupings.
 - The same districtwide poverty average must be used if the LEA selects option (1).

- For ranking by grade span groupings, the LEA may use (1) the districtwide poverty average or (2) the districtwide grade span poverty averages for the respective grade span groupings.
 - If an LEA has no school attendance areas above 75 percent poverty, the LEA may rank districtwide or by grade span groupings.
 - An LEA's organization of its schools defines its grade span groupings. For example, if an LEA had elementary schools serving all elementary grades, middle schools, and high schools, the grade span groupings would be grades K-5, 6-8, and 9-12. To the extent an LEA has schools that overlap grade spans (e.g., K-5, K-8, 6-8), the LEA may include a school in the grade span in which it is most appropriate.
4. An LEA with an enrollment of less than 1,000 students or with only one school per grade span is not required to rank its school attendance areas.

LEA Discretion in Selecting Participating Areas and Schools

5. An LEA may--
- Designate as eligible any school attendance area or school in which at least 35 percent of the children are from low-income families--i.e., the "35 percent rule."
 - Use Part A funds in a school that does not serve an eligible school attendance area if the percentage of children from low-income families enrolled in the school is equal to or greater than the percentage of such children in a participating school attendance area of the LEA.
 - Elect not to serve an eligible school attendance area or school that has a higher percentage of children from low-income families if--
 - ◆ The school meets the Title I comparability requirements;
 - ◆ The school is receiving supplemental funds from other State or local sources that are spent according to the requirements of Sections 1114 or 1115; and
 - ◆ The funds expended from such other sources equal or exceed the amount that would be provided under Part A.

Allocating Title I Funds to Participating Areas and Schools

6. An LEA must allocate Part A funds to participating school attendance areas or schools, in rank order, on the basis of the total number of children from low-income families in each area or school. An LEA with an enrollment of less than 1,000 students or with only one school per grade span is not required to allocate funds to areas or schools in rank order.
7. If an LEA serves any areas or schools below 35 percent poverty, the LEA must allocate to all its participating areas or schools an amount for each low-income child in each participating school attendance area or school that is at least 125 percent of the LEA's allocation per low-income child.

- An LEA's allocation per low-income child is the total LEA allocation under subpart 2 of Part A divided by the number of low-income children in the LEA according to the poverty measure selected by the LEA to identify eligible school attendance areas. The LEA then multiplies this per-child amount by 125 percent.
 - An LEA calculates 125 percent of its allocation per low-income child before the LEA reserves any funds.
 - An LEA must allocate at least this amount for each low-income child in every school the LEA serves, not just for those schools below 35 percent poverty.
 - If remaining funds are not sufficient to fully fund the next ranked eligible school attendance area or school, the LEA may serve the area or school if it determines the funds are sufficient to enable children to make adequate progress toward meeting the State's challenging performance standards.
8. An LEA serving only areas or schools at or above 35 percent poverty must allocate funds in rank order, on the basis of the total number of low-income children in each area or school but is not required to allocate 125 percent of the LEA's allocation per low-income child (described in 7. above). However, in determining what per-child amount to allocate, the LEA should bear in mind the purpose of such funding--to enable children who are most at risk to meet the State's challenging student performance standards.
 9. An LEA is not required to allocate the same per-child amount to each area or school. However, the LEA must allocate a higher per-child amount to areas or schools with higher poverty rates than it allocates to areas or schools with lower poverty rates.
 10. An LEA that opts to serve schools below 75 percent poverty using grade span groupings may determine different per-child amounts for different grade spans as long as those amounts do not exceed the amount allocated to any area or school above 75 percent poverty. Per-child amounts within grade spans may also vary as long as the LEA allocates higher per-child amounts to areas or schools with higher poverty rates than it allocates to areas or schools with lower poverty rates.

QUESTIONS AND ANSWERS

- Q1. When applying the "35 percent rule," must all school attendance areas with at least 35 percent poverty be served?**
- A.** No. However, school attendance areas to be served must be selected in rank order.

Q2. Section 1113(b)(1)(C)(i)(II) allows an LEA to skip an eligible school attendance area or school that has a higher percentage of poverty if the area or school is spending supplemental State or local funds "according to the requirements of section 1114 or 1115." What is meant by "according to the requirements of section 1114 or 1115?"

A. A supplemental State or local program meets the requirements of Section 1114 if the program--

- Is implemented in a school that meets the schoolwide poverty threshold for eligibility.
- Is designed to upgrade the entire educational program in the school to support students in their achievement toward meeting the State's challenging student performance standards.
- Is designed to meet the educational needs of all children in the school, particularly the needs of children who are failing, or most at risk of failing, to meet the State's challenging student performance standards.
- Uses the State's system of assessment to review the effectiveness of the program.

A supplemental State or local program meets the requirements of Section 1115 if the program--

- Serves only children who are failing, or most at risk of failing, to meet the State's challenging student performance standards.
- Provides supplementary services designed to meet the special educational needs of the children who are participating to support their achievement toward meeting the State's student performance standards that all children are expected to meet.
- Uses the State's system of assessment to review the effectiveness of the program.

Q3. How does an LEA handle carryover funds when allocating funds to school attendance areas?

A. Although an LEA may not use carryover funds to provide services in an ineligible school, an LEA has considerable discretion in handling carryover funds. Some of these options include:

- Allow each school to retain its carryover funds for use in the subsequent year.
- Add carryover funds to the LEA's subsequent year's allocation and distribute to participating areas and schools in accordance with allocation procedures.
- Designate carryover funds for particular activities that could best benefit from additional funding. (Examples: parental involvement activities; schools with the highest concentrations of poverty.)

Regardless of the option an LEA elects, the LEA may not carry over more than 15 percent of its allocation from one year to the next. This percentage limitation does not apply to an LEA that receives an allocation of less than \$50,000 under subpart 2 of Part A. An SEA may, once every three years, waive the percentage limitation if it determines that the request of an LEA is reasonable and necessary or if supplemental appropriations become available.

Q4. May an LEA allocate a greater per-pupil amount, for example, to schoolwide program schools than to targeted assistance schools since schoolwide programs serve all children in the school?

A. The Title I statute requires allocations to be based on the total number of low-income children in a school attendance area or school. Therefore, poverty is the only factor on which an LEA may determine funding. In other words, an LEA may not allocate funds based on the instructional model, educational need, or any other non-poverty factor. In fact, now that Part A places the responsibility for selecting participants and designing programs on schools rather than on the LEA, the LEA will not necessarily be in a position to know in advance the instructional model or educational need when determining allocations.

Q5. May an LEA reserve funds from its Part A allocation before distributing funds to school attendance areas?

A. Yes. Before allocating funds an LEA shall reserve funds as are reasonable and necessary to--

- Provide services comparable to those provided to children in participating school attendance areas and schools to serve--

- ◆ Children in local institutions for neglected children; and

- ◆ Where appropriate--

- ▶ Eligible homeless children who do not attend participating schools, including providing educationally related support services to children in shelters.

- ▶ Children in local institutions for delinquent children.

- ▶ Neglected and delinquent children in community day school programs.

- Meet the requirements for parent involvement. An LEA that receives more than \$500,000 under subpart 2 of Part A must spend at least 1 percent of its allocation for parental involvement activities. However, funds that schools spend for parent involvement activities may count toward meeting this requirement.

- Administer Part A programs for public and private school children, including special capital expenses not paid for from funds provided under §200.16 of the Title I regulations that are incurred as a result of implementing alternative delivery systems to comply with the requirements of Aguilar v. Felton.
- Conduct other authorized activities such as preschool programs, summer school and intersession programs, professional development, school improvement, and coordinated services.

Because the reservation of funds by an LEA will reduce the funds available for distribution to participating areas and schools, the LEA must consult with teachers, pupil services personnel (where appropriate), principals, and parents of children in participating schools in determining, as part of its LEA plan, what reservations are needed. This issue must also be part of the consultation with private school officials before an LEA makes any decisions that affect the opportunities of eligible private school children to participate in Part A programs.

Q6. Is there a maximum amount that an LEA may reserve?

- A. No. An LEA must bear in mind, however, that the goal of Part A is to enable participating children to make adequate progress toward meeting the challenging student performance standards that all children are expected to meet. Moreover, the LEA must calculate 125 percent of the LEA's allocation per low-income child before it reserves any funds.

Q7. How may an LEA reserve funds for activities such as parental involvement and professional development?

- A. An LEA may reserve funds at the LEA level for activities such as parental involvement and professional development or the LEA may require its Title I schools to carry out these activities from their allocations. For example, an LEA that is required to spend at least 1 percent of its allocation for parental involvement activities may reserve the full 1 percent from its Part A allocation, require each school to spend a requisite amount from its Part A allocation, or use a combination of these approaches.

Q8. May an LEA consider variations in personnel costs, such as seniority pay differentials or fringe benefit differentials, as LEA-wide administrative costs, rather than as part of the funds allocated to school attendance areas?

- A. Yes, this is an allowable option for the LEA. The statute requires that Part A funds be allocated to school attendance areas and schools on the basis of the number of children from low-income families in each area or school. This provision assumes, for example, that two schools with the same number of poor children need similar amounts of funds to provide comparable educational programs to participating children. An inequity may occur, however, if schools with similar allocations offering similar instructional programs need to spend different amounts because of the salary and fringe benefit costs of the staff providing the instruction. To address this situation, an LEA may consider variations in personnel costs, such as seniority pay differentials or fringe benefits differentials, as LEA-wide administrative costs, rather than as part of the funds allocated to school attendance areas or schools. The LEA would pay the differential salary and fringe benefit costs from its administrative funds taken off the top of the LEA's allocation. This policy would have to be applied consistently to staff serving both public

and private school children throughout the LEA.

Q9. How may preschool children be served under Part A?

- A. There are several ways in which preschool children may be served under Part A. For example--
- A participating school may use part of its Part A funds to operate a preschool program.
 - An LEA may reserve an amount from the LEA's total allocation to operate a Part A preschool program for eligible children in the district as a whole or for a portion of the district.
 - An LEA may reserve an amount from the LEA's total allocation and distribute these funds to schools that wish to operate a Part A preschool program.

Q10. Is there any flexibility in how an LEA may count children from low-income families in middle and high schools?

- A. Of the four measures of poverty the statute permits an LEA to use for identifying eligible school attendance areas and allocating funds to those areas, eligibility for free or reduced-price lunch is by far the measure most frequently used. Yet, we know from experience that high school and middle school students are less likely to participate in free and reduced-price lunch programs than are elementary school students. Hence, those schools often may not be identified as eligible for Title I services or, if eligible, may not receive as high an allocation as their actual poverty rate would require. In order to address the situation, an LEA may use comparable data collected through alternative means such as a survey. Also, an LEA may use the feeder pattern concept. This concept would allow the LEA to project the number of low-income children in a middle school or high school based on the average poverty rate of the elementary school attendance areas that feed into that school.

EXAMPLE OF FEEDER PATTERN

<u>DISTRICT</u>	<u>ENROLLMENT</u>	<u>LOW-INCOME #</u>
(Elementary)		
School A	568	364
School B	329	163
School C	588	262
School D	<u>836</u>	<u>277</u>
Total	2,321	1,066
(High School)	2,000	918

Calculate average percentage of poverty for the four elementary school attendance areas by dividing the total number of low-income children by the total enrollment (1,066/2,321). The average percentage of poverty is 45.92%.

Because these four elementary schools feed into the high school, the poverty percentage of the high school is also 45.92%.

To calculate the number of low-income students in the high school, multiply the total school enrollment by the average percentage of poverty for the four elementary feeder schools (2,000 x 45.92%). **This is the number used for allocating Title I funds to the high school.**

EXAMPLE OF FEEDER PATTERN

<u>DISTRICT</u>	<u>ENROLLMENT</u>	<u>LOW-INCOME #</u>
(Elementary)		
School A (1)	512	360
School B (1)	322	142
School C (2)	450	100
School D (1)	376	201
School E (2)	504	221
School F (2)	610	307
School G (1)	<u>416</u>	<u>202</u>
Total	3,190	1,533

(Middle School 1) 1,599 890

Calculate average percentage of poverty for elementary attendance areas A, B, D, and G by dividing the total number of low-income children in schools A, B, D, and G by the total enrollment of schools A, B, D, and G (905/1,626). The average percentage of poverty is 55.66%.

Because these four elementary schools feed into Middle School 1, the poverty percentage of Middle School 1 is also 55.66%

To calculate the number of low-income students in Middle School 1, multiply the total school enrollment by the average percentage of poverty for the four elementary feeder schools (1,599 x 55.66%). **This is the number used for allocating Title I funds to Middle School 1.**

(Middle School 2) 1,325 532

Calculate average percentage of poverty for elementary attendance areas C, E, and F by dividing the total number of low-income children in schools C, E, and F by the total enrollment of schools C, E, and F (628/1,564). The average percentage of poverty is 40.15%.

Because these three elementary schools feed into Middle School 2, the poverty percentage of Middle School 2 is also 40.15%.

To calculate the number of low-income students in Middle School 2, multiply the total school enrollment by the average percentage of poverty for the three elementary feeder schools (1,325 x 40.15%). **This is the number used for allocating Title I funds to Middle School 2.**

Feeder Pattern Example (continued)

(High School)	3,000	1,422
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Calculate average percentage of poverty for all elementary attendance areas by dividing the total number of low-income children by the total enrollment (1,533/3,190). The average percentage of poverty is 48.06%.

Because all elementary schools eventually feed into the high school, the poverty percentage of the high school is also 48.06%.

To calculate the number of low-income students in the high school, multiply the total school enrollment by the average percentage of poverty for all the elementary feeder schools (3,000 x 48.06%). **This is the number used for allocating Title I funds to the high school.**

When an LEA elects to use the feeder pattern, the LEA--

- Determines the districtwide average of poverty based on all of the schools for which the district is using actual poverty data; and
- Uses this districtwide average to rank all of the attendance areas or schools in the district.

If an LEA serves attendance areas or schools below a 35 percent poverty rate, the district's allocation per low-income child must be based on the actual number of low-income children in the feeder schools, and the projected number in the feeder pattern receiving schools.

Q11. How are funds made available to provide services to eligible private school children?

- A. Title I continues the requirement that an LEA provide equitable services to eligible children enrolled in private schools. Because of other changes in Title I, however, some new procedures are necessary. For example, Section 1113(c) of Title I requires an LEA to allocate funds to a participating school attendance area or school on the basis of the total number of children from low-income families, including low-income children attending private schools. Thus, the LEA, in consultation with private school officials, must obtain the best available poverty data on private school children who reside in participating attendance areas. Because private school officials may have access to some sources of poverty information not easily accessible to public school officials, it is very important that public and private school officials cooperate in this effort.

LEAs have flexibility in the methods used to collect poverty data on private school children. For example, an LEA could use:

1. Data from the same source for both public and private school children.
2. Poverty data for private school children that are from a different source than the data the LEA uses for public school children as long as the income level for both sources is generally the same.

3. If complete data from the same or comparable poverty sources are not available, extrapolated data on the number of low-income private school children based on actual data from a representative sample of private school children.
4. Correlated data that shows the relation between two known sources of poverty data on public school children, which is then applied to a known source of data on private school children.
5. For 1995-96 **ONLY**, proportional data based on the poverty percentage of each public school attendance area applied to the total number of private school children who reside in that area.

Although funds are allocated on the basis of poor children, private school children eligible to be served are children who reside in a participating public school attendance area and who have educational needs. To provide equitable services to eligible private school children, an LEA must reserve the amounts generated by poor private school children who reside in participating public school attendance areas. In consultation with private school officials, an LEA may choose one, or a combination of, the following options for using the funds reserved for private school children:

- Provide equitable services to eligible children in each private school with the funds generated by children from low-income families who reside in participating public school attendance areas and who attend that private school.
- Combine the funds generated by poor private school children in all participating areas to create a pool of funds from which the LEA provides equitable services to eligible private school children who reside in participating public school attendance areas and are in the greatest educational need of those services. Under this option, the services provided to eligible children in a particular private school are not dependent upon the amount of funds generated by poor children in the school.

EXAMPLE OF RANKING SCHOOLS & ALLOCATING FUNDS IN AN LEA SERVING SCHOOLS BELOW 35 % POVERTY (125 % RULE APPLIES)

Example 1

Note: Totals may not add due to rounding

11-May-95

Per-Pupil 125% Calculation: To determine the amount per child, divide the LEA's allocation (\$2,366,381) by its total number of children from low-income families (2,618) to arrive at an amount per poverty child (\$903.89). Multiply this amount by 1.25 to determine the minimum per-child payment (\$1,129.86) for each attendance area (see table below)

LEA Allocation		Count of Children from Low-Income Families		\$ Per Poverty Child				
\$2,366,381	Divided By	2,618	=	\$903.89	X	125%	=	\$1,129.86

Total Title I Allocation for LEA	\$2,366,381
Reservations	
Neglected	- \$10,000
1% parent involvement	- \$23,664
Homeless	- \$10,000
Administration, including capital expenses	- \$184,909
Remaining amount to be distributed to schools	\$2,137,808

ALLOCATION TO ELIGIBLE SCHOOLS

	Total Enrollment	Children from Low-Income Families		Total	Percent Poor	Eligible Schools 1 = Yes 0 = No	Minimum Attendance Area Allocation (No Poor X \$1,129.86)	Attendance Area Allocation (1)	Allocation Generated By Public School Poor Children	Allocation Generated By Private School Poor Children (2)
		Public	Private							
LEA Total	14,059	2,550	68	2,618	LEA AVG. 18.62%	8	\$1,875,569	\$2,137,808	\$2,083,719	\$54,089
Attendance Area										
Valley View	696	265	8	273	39.22%	1	\$308,452	\$351,579	\$341,277	\$10,303
Violet Hill	870	287	5	292	33.56%	1	\$329,919	\$376,048	\$369,609	\$6,439
Elemwood	951	260	15	275	28.92%	1	\$310,712	\$354,155	\$334,837	\$19,318
Oakdale MS	276	78	0	78	28.26%	1	\$88,129	\$100,451	\$100,451	\$0
Hobson	601	124	6	130	21.63%	1	\$146,882	\$167,419	\$159,692	\$7,727
Davis	1,134	227	3	230	20.28%	1	\$259,868	\$296,202	\$292,339	\$3,864
Takoma HS	1,080	201	5	206	19.07%	1	\$232,751	\$265,294	\$258,855	\$6,439
Berlieth HS	933	176	0	176	18.86%	1	\$198,856	\$226,659	\$226,659	\$0
Indian Rock MS	1,695	294	10	304	17.94%	0				
Camp Springs	1,026	178	4	182	17.74%	0				
Taft HS	2,073	237	9	246	11.87%	0				
Bannaker	874	89	2	91	10.41%	0				
White Hill	857	87	1	88	10.27%	0				
Eastern MS	490	47	0	47	9.59%	0				
Roosevelt HS	203	0	0	0	0.00%	0				
Wilson HS	300	0	0	0	0.00%	0				

- (1) Example assumes that amount remaining after allocations based on the minimum amount per child would be redistributed proportionately to schools receiving funds.
- (2) The LEA must reserve the amount of funds generated by private school children and in consultation with appropriate private school officials may (1) combine those amounts to create a pool of funds from which the LEA provides equitable services to eligible private school children in greatest need of those services, or (2) provide equitable services to eligible children in each private school with the funds generated by children from low-income families who attend that private school.

EXAMPLES

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EXAMPLE OF RANKING SCHOOLS & ALLOCATING FUNDS IN AN LEA USING THE 35% ELIGIBILITY PROVISION

Example 2		Note: Totals may not add due to rounding		11-May-95
Per-Pupil Calculation (125% Not Required)				
Amount LEA determines to allocate per poverty child (LEA Discretion)		\$700.00		
Total Title I Allocation for LEA		\$4,180,273		
Reservations				
Neglected		- \$38,000		
1% parent involvement		- \$23,664		
Homeless		- \$20,000		
Administration, including capital expenses		- \$184,909		
Remaining amount to be distributed to schools		\$3,913,700		

ALLOCATION TO ELIGIBLE SCHOOLS

	Total Enrollment	Children from Low-Income Families		Total	Percent Poor	Eligible Schools 1 = Yes 0 = No	Attendance Area Allocation (No. of Poor X \$700)	Allocation Generated By Public School Poor Children	Allocation Generated By Private School Poor Children (1)
		Public	Private						
LEA Total	14,059	6,767	100	6,867	LEA AVG 48.84%	11	\$3,913,700	\$3,847,200	\$66,500
Attendance Area									
Violet Hill	870	850	20	870	100.00%	1	\$609,000	\$595,000	\$14,000
Oakdale MS	276	202	8	210	76.09%	1	\$147,000	\$141,400	\$5,600
Elmwood	951	591	24	615	64.67%	1	\$430,500	\$413,700	\$16,800
Valley View	696	444	0	444	63.79%	1	\$310,800	\$310,800	\$0
Hobson	601	367	10	377	62.73%	1	\$263,900	\$256,900	\$7,000
Berlieth HS	933	550	5	555	59.49%	1	\$388,500	\$385,000	\$3,500
Davis HS	1,134	646	8	654	57.67%	1	\$457,800	\$452,200	\$5,600
Indian Rock MS	1,695	815	0	815	48.08%	1	\$570,500	\$570,500	\$0
Roosevelt HS	203	95	0	95	46.80%	1	\$66,500	\$66,500	\$0
Takoma HS	1,080	487	6	493	45.65%	1	\$345,100	\$340,900	\$4,200
Camp Springs	1,026	449	14	463	45.13%	1	\$324,100	\$314,300	\$9,800
White Hill	857	293	3	296	34.54%	0			
Bannaker	874	299	2	301	34.44%	0			
Eastern MS	490	142	0	142	28.98%	0			
Taft HS	2,073	509	0	509	24.55%	0			
Wilson HS	300	28	0	28	9.33%	0			

- (1) The LEA must reserve the amount of funds generated by private school children and in consultation with appropriate private school officials may (1) combine those amounts to create a pool of funds from which the LEA provides equitable services to eligible private school children in greatest need of those services; or (2) provide equitable services to eligible children in each private school with the funds generated by children from low-income families who attend that private school.

EXAMPLE OF RANKING SCHOOLS & ALLOCATING FUNDS IN AN LEA SERVING ATTENDANCE AREAS ABOVE THE DISTRICT POVERTY RATE

Example 3		11-May-95	
Per-Pupil Calculation (125% Not Required)		Note: Totals may not add due to rounding	
Amount LEA determines to allocate per-poverty child (LEA Discretion)		\$573.96	
Total Title I Allocation for LEA		\$2,366,573	
Reservations			
Neglected	-	\$10,000	
1% parent involvement	-	\$23,664	
Homeless	-	\$10,000	
Administration, including capital expenses	-	\$184,909	
Remaining amount to be distributed to schools		\$2,138,000	

ALLOCATION TO ELIGIBLE SCHOOLS

	Total Enrollment	Children from Low-Income Families		Total	Percent Poor	Eligible Schools 1 = Yes 0 = No	Attendance Area Allocation (No. of Poor X \$573.96)	Allocation Generated By Public School Poor Children	Allocation Generated By Private School Poor Children (1)
		Public	Private						
LEA Total	14,059	6,767	100	6,867	LEA AVG. 48.84%	7	\$2,138,000	\$2,094,953	\$43,047
Attendance Area									
Violet Hill	870	850	20	870	100.00%	1	\$499,345	\$467,866	\$11,479
Oakdale MS	276	202	8	210	76.09%	1	\$120,532	\$115,940	\$4,592
Elmwood	951	591	24	615	64.67%	1	\$352,985	\$339,210	\$13,775
Valley View	696	444	0	444	63.79%	1	\$254,838	\$254,838	\$0
Hobson	601	367	10	377	62.73%	1	\$216,383	\$210,643	\$5,740
Berlieth HS	933	550	5	555	59.49%	1	\$318,548	\$315,678	\$2,870
Davis HS	1,134	646	8	654	57.67%	1	\$375,370	\$370,778	\$4,592
Indian Rock MS	1,695	815	0	815	48.08%	0			
Roosevelt HS	203	95	0	95	46.80%	0			
Takoma HS	1,080	487	6	493	45.65%	0			
Camp Springs	1,026	449	14	463	45.13%	0			
White Hill	857	293	3	296	34.54%	0			
Bannaker	874	299	2	301	34.44%	0			
Eastern MS	490	142	0	142	28.98%	0			
Taft HS	2,073	509	0	509	24.55%	0			
Wilson HS	300	28	0	28	9.33%	0			

- (1) The LEA must reserve the amount of funds generated by private school children and in consultation with appropriate private school officials may (1) combine those amounts to create a pool of funds from which the LEA provides equitable services to eligible private school children in greatest need of those services; or (2) provide equitable services to eligible children in each private school with the funds generated by children from low-income families who attend that private school.

EXAMPLE OF RANKING SCHOOLS & ALLOCATING FUNDS IN AN LEA

USING THE 35% ELIGIBILITY PROVISION AND ALLOWING FOR "BANDS" OF POVERTY WITHIN THE LEA

Example 4

11-May-95

Per-Pupil Calculation (125% Not Required)

Note: Totals may not add due to rounding

Amount LEA determines to allocate per-poverty child:

Schools with greater than 65% poverty	\$950
Schools with greater than 50% poverty, less than 65% poverty	\$900
Schools with less than 50% poverty (LEA Discretion)	\$850

Total Title I Allocation for LEA	\$5,432,969
Reservations	
Neglected	- \$20,000
1% parent involvement	- \$54,330
Homeless	- \$20,000
Administration, including capital expenses	- \$346,039
Remaining amount to be distributed to schools	\$4,992,600

ALLOCATION TO ELIGIBLE SCHOOLS

	Total Enrollment	Children from Low-Income Families			Percent Poor	Eligible Schools 1 = Yes 0 = No	Attendance Area Allocation (No Poor X \$950, \$900, or \$850, Depending on Poverty Band)	Allocation Generated By Public School Poor Children	Allocation Generated By Private School Poor Children (1)
		Public	Private	Total					
LEA Total	14,059	6,767	100	6,867	LEA AVG 48.84%	11	\$4,992,600	\$4,906,700	\$85,900
Attendance Area									
1 Violet Hill	870	850	20	870	100.00%	1	\$826,500	\$807,500	\$19,000
2 Oakdale MS	276	202	8	210	76.09%	1	\$199,500	\$191,900	\$7,600
1 Elmwood	951	591	24	615	64.67%	1	\$553,500	\$531,900	\$21,600
1 Valley View	696	444	0	444	63.79%	1	\$399,600	\$399,600	\$0
1 Hobson	601	367	10	377	62.73%	1	\$339,300	\$330,300	\$9,000
3 Berlieth HS	933	550	5	555	59.49%	1	\$499,500	\$495,000	\$4,500
3 Davis HS	1,134	646	8	654	57.67%	1	\$588,600	\$581,400	\$7,200
2 Indian Rock MS	1,695	815	0	815	48.08%	1	\$692,750	\$692,750	\$0
3 Roosevelt HS	203	95	0	95	46.80%	1	\$80,750	\$80,750	\$0
3 Takoma HS	1,080	487	6	493	45.65%	1	\$419,050	\$413,950	\$5,100
1 Camp Springs	1,026	449	14	463	45.13%	1	\$393,550	\$381,650	\$11,900
1 White Hill	857	293	3	296	34.54%	0			
1 Bannaker	874	299	2	301	34.44%	0			
2 Eastern MS	490	142	0	142	28.98%	0			
3 Taft HS	2,073	509	0	509	24.55%	0			
1 Wilson HS	300	28	0	28	9.33%	0			

(1) The LEA must reserve the amount of funds generated by private school children and in consultation with appropriate private school officials may (1) combine those amounts to create a pool of funds from which the LEA provides equitable services to eligible private school children in greatest need of those services; or (2) provide equitable services to eligible children in each private school with the funds generated by children from low-income families who attend that private school.

federal register

Tuesday
October 10, 1995

Part IV

Department of Education

**Part A of Title I of the Elementary and
Secondary Education Act of 1965; Notice**

DEPARTMENT OF EDUCATION

Part A of Title I of the Elementary and Secondary Education Act of 1965

AGENCY: Department of Education.

ACTION: Notice of guidance for requesting waivers under part A of title I of the Elementary and Secondary Education Act of 1965 for schools under State-ordered or court-ordered desegregation plans.

SUMMARY: In this notice, the Assistant Secretary for Elementary and Secondary Education provides guidance to local educational agencies (LEAs) with schools under a court-ordered or State-ordered desegregation plan or a plan that continues to be implemented in accordance with a court-ordered or State-ordered desegregation plan. This guidance is intended to assist the Secretary in implementing section 1113(a)(7) of title I of the Elementary and Secondary Education Act of 1965 (Title I). The information obtained enables the Secretary to waive certain requirements of title I for eligible LEAs.

ADDRESSES: Requests for waivers should be submitted, in writing, to the Honorable Richard W. Riley, Secretary of Education, U.S. Department of Education, 600 Independence Avenue SW., room 6300, Attn: Waiver Action Board, Washington, D.C. 20202-0125.

FOR FURTHER INFORMATION CONTACT: Mary Jean LeTendre, Director, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 600 Independence Avenue, S.W. (Portals Building, room 4400), Washington, D.C. 20202-6132. Telephone (202) 260-0826. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: One of the overarching principles of part A of title I of the Elementary and Secondary Education Act of 1965, as recently amended by the Improving America's Schools Act, is to target resources on those elementary and secondary schools with the highest concentrations of children from low-income families. As a result, section 1113(a) of title I requires an LEA to identify its eligible school

attendance areas and schools, rank those areas and schools according to concentrations of poverty, and serve those areas and schools in rank order. An eligible area or school is one in which the percentage of children from low-income families is above the districtwide poverty average or 35 percent. Under section 1113(c)(1) of title I, the LEA must allocate funds to participating areas or schools in rank order on the basis of the total number of children from low-income families in each area or school.

Section 1113(a)(7) of title I recognizes that a State-ordered or court-ordered school desegregation plan or a plan that continues to be implemented in accordance with such a desegregation plan may alter the concentrations of poverty in schools governed by the plan. To accommodate this situation, if the number of children from low-income families in a school under a desegregation plan is at least 25 percent of the school's total enrollment, the LEA may request the Secretary to waive the eligibility and allocation requirements in section 1113(a) and (c) so that the LEA may identify as eligible and serve the school under title I. The Secretary may grant the LEA's request if the Secretary determines that approval of the request would further the purposes of part A of title I.

If an LEA desires a waiver of the requirements in either section 1113(a) or (c) for a school under a State-ordered or court-ordered school desegregation plan or a plan that continues to be implemented in accordance with such a desegregation plan, the LEA must submit a written request to the Secretary. The Secretary encourages the LEA, in preparing its request, to seek comment from interested parties, including the State educational agency and private school officials, if appropriate, and to include the following information in its request so that the Secretary may determine whether the request meets the statutory criteria in section 1113(a)(7):

- The school or schools for which the waiver is requested.
- A copy of the LEA's ranking of school attendance areas and schools, indicating which schools the LEA would fund if the waiver is granted and which schools the LEA would fund absent a waiver.

- A brief explanation of the LEA's desegregation plan (indicating the date of the plan and whether it is court-ordered, State-ordered, or continues to be implemented in accordance with a court- or State-ordered plan), how the desegregation plan affects the schools for which the waiver is requested (including, if available, the plan's impact on the concentrations of poverty in those schools), and how the plan would be furthered by the waiver.

- An explanation of the educational justification supporting the waiver request, including measurable educational improvement goals and expected outcomes for affected students and the methods to be used to measure progress in meeting those goals and outcomes.

- If the LEA proposes to skip eligible schools in order to serve schools under a waiver, an explanation of why it would further the purposes of the title I program to serve the schools for which the waiver is requested rather than the schools that would be skipped, including a description of the services to be provided and the number of children who would benefit.

- If the LEA is requesting a waiver of section 1113(c), the per-pupil amount the LEA intends to allocate to the schools for which the waiver is requested and the per-pupil amount(s) the LEA intends to allocate to its other schools.

- An explanation of how the LEA will continue to ensure the equitable participation of eligible private school children if the waiver is granted, including a description of how it consulted with private school officials in the development of the waiver request.

The Secretary may grant the LEA's request if the Secretary determines that approval of the request would further the purposes of part A of title I.

(Approved by the Office of Management and Budget under control number 18100586) (Catalog of Federal Domestic Assistance Number: 84.010, Improving Programs Operated by Local Educational Agencies)

Dated: September 27, 1995.

Thomas W. Payzant,

Assistant Secretary for Elementary and Secondary Education.

(FR Doc. 95-24963 Filed 10-6-95; 8:45 am)

BILLING CODE 4005-01-P



UNITED STATES DEPARTMENT OF EDUCATION

WASHINGTON, D.C. 20202- 6132

March 18, 1996

MEMORANDUM TO CHIEF STATE SCHOOL OFFICERS

SUBJECT: Use of Free and Reduced Price Lunch Data for Title I Purposes

As many of you are aware, we have been working with officials at the U.S. Department of Agriculture (USDA) regarding the use of free and reduced price lunch data for Title I purposes.

Section 108 of Public Law 103-448, the Healthy Meals for Healthy Americans Act of 1994, authorizes the release of student free and reduced school meal eligibility status for Federal and State education programs. Because of the sensitivity of this information and the intent to publish regulations implementing this section, USDA issued a memorandum several months ago stating that the use of such information for Federal and State education programs would not be permissible until such regulations were published. However, since that memorandum was issued, our Department has worked closely with USDA to explain the need for such information for the Title I program. As a result of our discussions, USDA issued the enclosed memorandum that authorizes the release of free and reduced school eligibility information for Title I purposes.

Please feel free to contact me should you have any further questions on this matter.

A handwritten signature in cursive script, reading "Mary Jean LeTendre", is positioned above the typed name.

Mary Jean LeTendre
Director
Compensatory Education Programs

Enclosure

cc: State Title I Coordinators

FEB 23 1996

SUBJECT: Cooperation with Education Officials - Title I

TO: Regional Directors
Special Nutrition Programs
All Regions

Section 108 of Public Law 103-448 authorizes the release of student free and reduced price school meal eligibility status for Federal and State education programs. Although we intend to promulgate regulations on the provision, we have not been able to publish the provision on a timely basis. Consequently, we are authorizing school officials, through this memorandum to cooperate with education officials collecting data for Title I purposes.

Under current policy, school food service officials may release aggregate information about the number of children eligible for free and reduced price meals. Additionally, we are now authorizing school food service officials to disclose the names of individual children who are eligible for free or reduced price meals, to officials collecting data for Title I allocation and evaluation purposes. While we are authorizing the release of this information, the final decision rests with local officials.

For allocation of funds under Title I, public schools are usually annually ranked according to the number of children eligible for free and reduced price school meals as an annual indicator of the socioeconomic status of the school's attendance area. While Title I funds are not dispersed to private schools, children from the attendance area who attend private schools may still be included in the total count of needy children living in the attendance area. Therefore, private schools that participate in the school nutrition programs may release the addresses, grade levels and eligibility status of children determined eligible for free and reduced price school meals to Title I officials. It should be noted that private schools would not need to release the names of free and reduced price eligible students, since addresses are sufficient to determine attendance areas.

While in some instances aggregate release of free and reduced price school meal information is sufficient, food service

Regional Directors

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officials may be asked to provide the names and eligibility status of individual children for Title I evaluation purposes. Consequently, school food service officials may cooperate with education officials for evaluation of Title I services. The Department of Education has been advised of this policy in the attached letter to Mary Jean LeTendre, Director of Compensatory Education Programs for that Department.

Please provide your States with copies of this memorandum and attached letter. You may contact Charles Heise or Barbara Semper at (703) 305-2968 with any questions.

SIGNED

 ALBERTA C. FROST
Director
Child Nutrition Division

Attachment

SCHOOLWIDE PROGRAMS



SCHOOLWIDE PROGRAMS

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Federal Register Notice - September 21, 1995 [Notice exempting schoolwide programs under Part A of Title I from statutory or regulatory requirements of other Federal education programs]

SCHOOLWIDE

SCHOOLWIDE PROGRAMS

INTRODUCTION

For the first time, ESEA programs are designed to work together with, rather than separately from, one another. Moreover, rather than operating apart from the broader education that children receive, ESEA programs are focused on supporting the overall reforms of States, school districts, and schools, and ensuring that all children--whatever their background and whatever school they attend--can reap the benefit of those reforms.

Title I schoolwide programs form the centerpiece of ESEA's new vision and are among the most promising changes in the new Title I. A schoolwide program school may now use its Part A funds coupled with other Federal education funds to upgrade the school's entire educational program, rather than to target services only on identified children. By affecting the entire program of instruction, the overall education of children in the most impoverished Title I schools can be improved. Whereas under the former Chapter 1, schools needed 75 percent poverty to be eligible for schoolwide projects, Title I gives many more schools the option to develop schoolwide programs--all schools with 60 percent poverty in the 1995-1996 school year and 50 percent poverty in subsequent years. And for schools opting to become schoolwide programs, schools have expanded flexibility and support.

Title I's emphasis on schoolwide programs responds to a solid research base about what makes schools work for disadvantaged students. Repeated findings show that:

- ◆ all children's performance is negatively affected in schools with high concentrations of poverty.
- ◆ for the lowest achieving students in the highest poverty schools to meet high standards of performance, their entire instructional program, not just a separate Title I program, must be substantially improved.
- ◆ educators in highly successful schools expect high academic achievement from every child.
- ◆ when an entire school is the target of change, schools serving the most disadvantaged youth can achieve success.

Below, the schoolwide program provisions in the new law are described in greater detail, along with how they can support high-quality reform in Title I schools.

UNDERSTANDING SCHOOLWIDE PROGRAMS

WHAT IS A SCHOOLWIDE PROGRAM?

A schoolwide program--

- Is built on schoolwide reform strategies, rather than separate, add-on services.

A schoolwide program permits a school to use funds from Part A and other Federal education program funds and resources to upgrade the entire educational program of the school in order to raise academic achievement for all the students. This contrasts with a Title I targeted assistance program, through which Part A funds are used only for supplementary educational services for eligible children who are failing or at risk of failing to meet State standards.

- Provides flexibility in spending Title I funds.

Schoolwide programs have great latitude in determining how to spend their Part A funds. Schoolwide programs do not have to identify particular children as eligible for services, show that Part A funds are paying for supplemental services that would otherwise not be provided, or separately track federal dollars. Instead, schoolwide programs can use their Part A funds in the manner they choose, as long as they engage in reform strategies that increase the amount and quality of learning time and help provide a high-quality curriculum for all children, according to a comprehensive plan to help children meet the State's challenging standards.

- Permits flexibility to combine other federal funds in support of the schoolwide program.

Schoolwide programs under the new Title I may now use, in addition to Part A funds, funds from most other federal education programs to upgrade the entire educational program. A schoolwide program that includes other federal programs **does not have to conform to the specific statutory or regulatory requirements of each separate program** as long as the intent and purposes of those programs, as well as certain requirements relating to such critical areas as civil rights and health and safety, are met. The involvement, during comprehensive planning of a schoolwide program, of all staff, parents, and others in the community that have a stake in the children's education will help to ensure that the program is designed to meet all of the school's students needs.

At the end of this chapter is a copy of the Schoolwide Program Notice, published in the Federal Register on September 21, 1995, that discusses which programs can be included and how their "intent and purposes" are met.

Note: Although children with disabilities may participate in schoolwide programs, funds from the Individuals with Disabilities Education Act (IDEA) may not be combined with other funds in a schoolwide program.

■ **Focuses on results.**

Flexibility in the use of funds is tied to increased achievement by children in the target groups that the individual programs are intended to help.

The essential components of schoolwide programs are discussed beginning on page 8 of this chapter.

WHAT ADVANTAGES DO SCHOOLWIDE PROGRAMS OFFER?

The schoolwide program provisions provide many advantages to schools developing schoolwide programs. By allowing schools to integrate their programs, strategies, and resources, Title I can become the catalyst for comprehensive reform of the entire instructional program children in these schools receive. An example can show why:

Imagine a schoolwide program funded under Title I, Part A, that also receives professional development funds under Title II, bilingual education funds under Title VII, and Vocational Education money under the Perkins Act. This schoolwide program school would not have to document that it spent professional development funds on professional development activities or Perkins money on vocational education programs. Nor does the school have to demonstrate that it is complying with all of the separate requirements of each of these programs. As long as the school meets the intent and purposes of these programs and demonstrates that its schoolwide program plan contains sufficient activities to reasonably address the needs of the intended beneficiaries of those programs that were identified through the comprehensive needs assessment, it could combine those funds with its other funds to support overall schoolwide initiatives for all students. Ultimately, the evaluation of the schoolwide program's effectiveness will demonstrate whether the intended beneficiaries' needs are being met by the many programs' resources.

By consolidating their federal resources to support schoolwide reform, the principal, teachers and other school staff within a school, with the participation of parents, have the opportunity to:

- ◆ comprehensively plan the overall educational program for all children in the school.
- ◆ come together with one another, eliminating the isolation that characterizes working conditions for many educators.
- ◆ address the needs of students in an integrated way.
- ◆ spend federal resources in ways they determine can most effectively raise the achievement of their students.
- ◆ stimulate comprehensive reform of the entire instructional program provided to children, rather than operating separate and fragmented add-on programs.

Schoolwides encourage schools to begin planning by asking themselves: How are the students performing in relation to what children are expected to know and do? What kind of schoolwide changes are necessary to support achievement of State standards? Is the program designed to address the needs of all children who attend the school over the entire year? As long as they are asking--and answering--these kinds of questions, schoolwides can use their federal resources to support the kinds of changes they deem essential for the success of their students.

WHICH SCHOOLS ARE ELIGIBLE TO OPERATE SCHOOLWIDE PROGRAMS?

A school may operate a schoolwide program if--

- The LEA determines that the school serves a participating attendance area or is a participating school under section 1113 of Title I.

AND

For the 1995-1996 school year:

- at least 60% of children enrolled in school are from low-income families.

OR

- at least 60% of the children residing in the attendance area the school serves are from low-income families.

For the 1996-1997 and subsequent school years:

- At least 50% of the children enrolled in the school or residing in the school attendance area are from low-income families.

Note: To determine eligibility for a schoolwide program, an LEA may use a different poverty measure than the one(s) used by the LEA to identify and rank school attendance areas for Part A eligibility and participation. For example, for the 1996-1997 school year, an LEA ranks its school attendance areas using AFDC data and determines that all schools with 45 percent poverty and above will participate in Title I. Although AFDC data indicate a school has 46 percent poverty which would not make it eligible to operate a schoolwide program, free and reduced price lunch data indicate that this same school has 52 percent poverty. The LEA may determine that this school is eligible to conduct a schoolwide program.

Q1. What happens if a school that becomes a schoolwide program drops below the initial eligibility threshold in a subsequent year?

- A. To promote effective, long-term planning, a school can maintain its schoolwide program eligibility even if it drops below the initial poverty threshold. There is no required redetermination of schoolwide program status every three years as there was in the past. Therefore, a school that becomes a schoolwide in 1996 with 51% poverty can continue its schoolwide program even if its poverty level falls below 50% in following years, as long as the school meets the general Title I eligibility and selection requirements and the LEA has sufficient funds to serve the school.

HOW DOES A SCHOOL BECOME A SCHOOLWIDE PROGRAM?

- The LEA determines that a school's poverty level makes it eligible to become a schoolwide program--60% or greater in the 1995 school year and 50% or greater in the following years--and the school has been selected to participate:

AND

- The school, in consultation with its district, decides that it wants to become a schoolwide program.

AND

- High-quality assistance and support is available to the school. This can be demonstrated in one of two ways:

- ◆ the state has provided written information to the LEA that demonstrates the

SEA has established a statewide system of support and improvement.

or

- ◆ the school demonstrates to its LEA that it will receive high-quality technical assistance and support from other assistance providers. Among the many examples of other assistance providers a school can draw on are--
 - Comprehensive technical assistance centers.
 - Regional education and research laboratories.
 - Universities, colleges and community colleges.
 - Other successful schools or educators (e.g., distinguished schools or distinguished educators).
 - Educators within the school.
 - Local consortia of various institutions such as community service organizations, educational agencies, and private industry.

It is important to recognize that it is a school's decision as to whether it will or will not choose to become a schoolwide program.

ENSURING HIGH-QUALITY SCHOOLWIDE PROGRAMS

Part A expands the schoolwide program approach and makes it easier for schools to operate such programs. It adds new provisions to ensure that schoolwides undertake the kinds of fundamental instructional reforms necessary to improve teaching and learning geared to challenging standards. These provisions, discussed in greater detail below, include school-level decisionmaking, a greater emphasis on comprehensive planning and reform, and increased technical assistance and support for schools engaging in schoolwide reform.

SCHOOL-LEVEL DECISIONMAKING

The new Title I, Part A brings program decisions down to the school level: **schools, in consultation with their districts, will determine how to use their funds in ways that best meet the needs of their students.** Bringing these decisions to the school level can help transform Title I from a district-directed "one-size-fits-all" program to a significant resource for schools to use to meet the needs of their students. However, consultation with the LEA regarding these decisions is extremely important because the LEA has the ultimate

responsibility for the education of its students and proper administration of Title I, Part A.

ESSENTIAL COMPONENTS OF SCHOOLWIDE PROGRAMS

Title I embraces a new approach that seeks every opportunity to focus Part A dollars and other funds and resources on leveraging overall improvements of teaching and learning in schools with the highest levels of poverty. However, we acknowledge that some current schoolwide programs are not undertaking the kinds of fundamental instructional reforms necessary to improve teaching and learning. **Section 1114(b)(1)** responds to these findings by requiring all schoolwide programs to include certain components that research suggests are essential to any high-functioning school.

Under Section 1114(b)(1), a schoolwide program must include the following 8 components:

1. **A comprehensive needs assessment** of the entire school that is based on information on the performance of children in relation to the State content and student performance standards.
2. **Schoolwide reform strategies that--**
 - ◆ Provide opportunities for all children to meet the State's proficient and advanced levels of student performance.
 - ◆ Are based on effective means of improving children's achievement.
 - ◆ Use effective instructional strategies that--
 - Increase the amount and quality of learning time, such as extended school year, before- and after-school, and summer school programs.
 - Help provide an enriched and accelerated curriculum.
 - Meet the educational needs of historically underserved populations, including girls and women.
 - ◆ Address the needs of all children in the school, but particularly the needs of children of target populations of any program that is included in the schoolwide program, **and** address how the school will determine if these needs are met. These programs may include counseling and mentoring services, college and career preparation, such as college and career guidance, services to prepare students for school-to-work transition, and the incorporation of gender equitable methods and practices.
 - ◆ Are consistent with, and are designed to implement, the State and local improvement plans, if any, approved under Title III of Goals 2000.
3. **Instruction by highly qualified professional staff.**

(Components continued)

4. **Professional development** for teachers and aides, and where appropriate, pupil services personnel, parents, principals, and other staff to enable all children in the schoolwide program to meet the State's student performance standards. (In accordance with sections 1114(a)(5) and 1119)
5. Strategies to **increase parental involvement**, such as family literacy services.
6. Strategies for **assisting** preschool children in the **transition from early childhood programs**, such as Head Start and Even Start, to local elementary school programs.
7. Steps to **include teachers in the decisions** regarding the use of assessments.
8. Activities to ensure that students who experience difficulty mastering any of the State's standards during the school year will be provided with **effective, timely additional assistance**. The assistance must include:
 - ◆ Measures to ensure that students' difficulties are identified on a timely basis and to provide sufficient information on which to base effective assistance.
 - ◆ To the extent the school determines it to be feasible using Part A funds, periodic training for teachers in how to identify difficulties and to provide assistance to individual students.
 - ◆ For any student who has not met the standards, teacher-parent conferences.

- **Title I does not have to pay for these components in a schoolwide program; rather, a school with a schoolwide program must include these components in its school.**

For example, School A decides to become a schoolwide program and to include most of its federal funds in the schoolwide program. Under the new Title I, School A may design the schoolwide program it wants without worrying about which funding source will pay for it or even how the federal funds will be used. As long as the school as a whole includes the 8 components--i.e., does a comprehensive needs assessment, includes schoolwide reform strategies geared to challenging standards, etc.--it can spend the vast majority of its federal resources as it chooses.

- Despite the seemingly equal weight of each of these 8 components, schools should not forget the purpose of a schoolwide program. Professional development, active and involved parents, and transition services are strategies that can help a schoolwide meet its core purpose; but they should not obscure that overall purpose--identifying and implementing those instructional strategies that can increase the quality and amount of learning time for all children to enable them to achieve to challenging academic standards.

Q2. May a schoolwide program implement the pull-out approach or operate specific programs that focus on a particular grade such as Reading Recovery?

- A. As long as the school includes the 8 components outlined above, it can implement any approach it chooses to meet the needs of its students. In most cases, enabling all children to achieve to challenging standards will require comprehensive improvements in the instructional program that is provided to all students in the school. But schoolwide program activities need not be uniform for the whole school. If the school's comprehensive needs assessment indicates that certain children can benefit from different types of activities, such as Reading Recovery, H.O.T.S., or other pull-out services for some more intensive instruction, a school certainly should conduct those activities.

Schoolwide programs serve all children in a school. All staff, resources, and classes are part of the overall schoolwide program. Therefore, when visiting or discussing a properly designed schoolwide program school, references will be made to staff, children, and classrooms, as opposed to, for example, a Title I classroom. Other things that should signal an improperly designed schoolwide program include: reduction of class size is the only evidence of change; only Federal funds are being used to affect change; superintendent requires a school to conduct a schoolwide or prevents a school from conducting a schoolwide, contrary to the school's desire; before providing additional assistance, a school requires certain children to be identified as eligible to receive such assistance.

ADDRESSING THE NEEDS OF ALL CHILDREN

"High standards for all"

The expanded opportunities in Title I for schoolwide programs are designed to assist schools, districts and States to raise the achievement of all children, but particularly those who have always been the intended beneficiaries of Title I--poor children, low-achieving children, migrant children, children who are neglected or at risk of dropping out, and limited-English-proficient children. By consolidating all funds within a school with many needs, comprehensive planning and reform, and more efficient use of a total sum of funding can **more effectively raise the achievement of those who are farthest behind**, as long as schools understand their responsibility to serve every child and to expect every child to learn.

We emphasize that this shift in Title I diminishes neither the program's continuing commitment to equity nor its central purpose of meeting the educational needs of disadvantaged children. In fact, it is the strength of this commitment that warrants a new program approach for addressing those needs.

Safeguards

The new Title I relies on a **results-based accountability** approach for reinforcing this commitment. This approach is designed to give the public concrete information on how schools and districts are actually doing in raising the achievement of different groups of students. (See standards and assessments chapter).

Section 1114 also includes some additional provisions to ensure that all students' needs are addressed.

- ◆ Schoolwides must address the needs of all children in the school, but particularly the needs of children who are members of the target population of any federal education program whose funds are included in the schoolwide program.
- ◆ Schoolwides that combine migrant education funds under Part C of Title I must, in consultation with parents of migratory children or organizations representing those parents, or both, first address the identified needs of migratory children that result from the effects of their migratory lifestyle or are needed to permit migratory children to participate effectively in school and to document that services to address those needs have been provided. Because migratory children often attend school throughout a 12-month period, a schoolwide school's plan should address all the school's children, not just those who attend during the "regular" school year.

EXAMPLE OF PLANNING SCHOOLWIDE PROGRAMS TO MEET THE NEEDS OF MIGRANT STUDENTS

A high school implementing a schoolwide program conducts an assessment of the needs of its migratory students as part of its comprehensive planning. Having found that many of the migratory students who enroll at the school need assistance in preparing for the Texas Assessment of Academic Skills (TAAS), which they must pass in order to receive a diploma when they return to Texas, the school provides for tutoring services aligned to the TAAS to be offered to migratory students when they arrive at the school later in the year.

- ◆ Schoolwides may combine Indian education funds under Subpart 1 of Part A of Title IX of the ESEA if the parent committee established by the LEA under section 9114(c)(4) approves the inclusion of those funds.

Sufficient Resources

To operate an effective schoolwide program, a school must have sufficient resources available. In particular, a schoolwide program school must receive at least the total amount of State and local funds that it would have received in the absence of the schoolwide program, including funds needed to provide services that are required by law for children with disabilities and children with limited-English proficiency.

PLANNING FOR SUCCESS

The schoolwide program comprehensive plan is a crucial element for reforming the instructional program in the school.

Development of Plan

- The plan must be developed **DURING A ONE-YEAR PERIOD** unless--
 - ◆ The school was operating a schoolwide project on the day before ESEA's enactment--10/20/94. The school may continue its schoolwide program as long as it develops a new plan (or amends an existing plan) during the first year of receiving assistance under Title I.
 - ◆ The LEA determines--after considering the recommendations of technical assistance providers--that less time is needed to develop and implement the schoolwide program.
- There must be **broad-based involvement in developing the plan** that includes the community to be served and the individuals who will carry out the plan, including teachers, principals, other school staff and, if appropriate, pupil services personnel, parents of students in the school, and secondary students if the plan relates to a secondary school.
- The plan, where appropriate, must be developed in **coordination with other important programs** within the school.
- The plan should be reviewed and updated regularly to reflect the needs of all children in the school.

Schoolwide Program Plan (Section 1114(b)(2))

Each school's comprehensive schoolwide program plan must:

1. Incorporate the components of a schoolwide program.
2. Describe how the school will use resources under Part A and other sources to implement those components.
3. Include a list of State, LEA, and Federal programs that will be included in the schoolwide program.
4. Describe how the school will provide individual assessment results to parents.
5. (If the State has developed or adopted a final assessment system) Provide for the disaggregation of data on the assessment results of students and the reporting of those data, but only when those data are statistically sound.

Note: It is the responsibility of the State and district, not the school, to seek to produce, in schoolwide programs, statistically sound results through the use of oversampling or other means.

6. (If the State does not have a final assessment system) Describe the data on the achievement of students in the school and effective instructional and school improvement practices on which the plan is based.

New Kinds of Planning

Title I adds a number of critical provisions to ensure that planning is part and parcel of a school's overall reform efforts and driven by the needs of the students and staff of the school, rather than administrative procedures:

- **A school can use an existing comprehensive school plan to satisfy the Title I planning requirements.**
 - ◆ A school with a comprehensive plan does not have to develop a separate schoolwide plan to satisfy Title I. Rather it can, and is encouraged to, incorporate the schoolwide components into its overall plan.
- **A school can structure its plan in the way it chooses.**
 - ◆ Requiring a schoolwide plan to "incorporate" the components of schoolwide

programs means that the plan does not have to describe each of these components separately or in any particular sequence or manner; it only must address each of these components some place within the plan.

- ◆ A schoolwide plan does not have to track activities or services to funding sources.
- **A schoolwide program plan can remain in effect for the duration of the school's participation under Title I.**
 - ◆ A school should review and update its plan, as it determines necessary, to reflect changes in its schoolwide program or changes to reflect State standards established after the plan was developed.
 - ◆ There is no longer the requirement that the schoolwide plan be submitted to the SEA every three years or to the LEA on a set cycle.
- **A school can maintain its schoolwide eligibility even if it drops below the initial poverty threshold in subsequent years.**
 - ◆ Title I, unlike the former Chapter 1, does not require a redetermination of a schoolwide program's eligibility every three years.
 - ◆ Unlike the former Chapter 1, a schoolwide program does not have to make certain specified achievement gains in order to retain its schoolwide program status.

These provisions support effective and comprehensive schoolwide planning tied to the overall planning of a school. They focus on internal professional responsibility rather than simply externally-driven accountability. And they acknowledge lessons already learned from experience with comprehensive school reform: fundamental change takes time and cannot be piecemeal, fragmented, or discontinuous.

SCHOOLWIDE SUPPORT AND ASSISTANCE

The new Title I focuses on schools as active and central participants in all aspects of schooling. All schools have the authority to make Title I program decisions how to use funds to best meet the needs of their students. Schoolwides, in particular, are far more able to design their own innovative solutions to address their schools' specific problems and needs.

For schoolwides to move successfully to the center stage of Title I reform, they must have access to adequate training and assistance.

School Support Teams

Section 1117(c)(1) of Title I requires that each SEA, in consultation with LEAs and schools, establish a system of school support teams to provide information and assistance to schoolwide programs and to assist those programs in providing an opportunity for all students to meet the State's student performance standards.

A school support team will work cooperatively with each school and make recommendations as the school develops its schoolwide program plan, will review each plan, and will make recommendations to the school and the LEA.

During the operation of the schoolwide program, a school support team shall--

- Periodically review the progress of the school in enabling children in the school to meet the State's student performance standards.
- Identify problems in the design and operation of the instructional program.
- Make recommendations for improvement to the school and the LEA.

Each school support team shall be composed of teachers, pupil services personnel, representatives of organizations knowledgeable about successful schoolwide programs or comprehensive school reform (especially distinguished educators) and others who are knowledgeable about research and practice on teaching and learning, particularly about strategies for improving educational opportunities for low-achieving students.

Distinguished Educators, Distinguished Schools and Alternative Approaches

There does not have to be the same number of teams as there are schoolwide programs in a State. Although this is a possibility, the law provides great flexibility for structuring a system of support. For example, the law also provides for:

- **"Distinguished Educators"** to be available to assist schoolwide program schools, as well as other schools and districts furthest from meeting the State standards.
- **"Distinguished Schools"**--those schools exceeding the State's definition of adequate progress for three years that can become mentors to other schools, and receive monetary and other rewards from the SEA and LEA.
- **"Alternative Approaches"**--a State may devise additional approaches to providing assistance, such as providing assistance through institutions of higher education or educational services agencies, as long as these alternative approaches fulfill their obligation for supporting schoolwide programs.

As noted above, it is not necessarily envisioned that there be a school support team for every schoolwide program school in a State but, rather, that there be a State system that would provide access to and support from a combination of entities in the system. The system of school support teams will coordinate and facilitate access to appropriate services and resources for schoolwide program schools. This coordination and facilitation can include direct services from a team or individual team members; team or team members working in conjunction with the SEA, institutes of higher education, regional education laboratories, the National Diffusion Network, and other consultants; or brokering and referring services to schoolwide program schools from such agencies and individuals. This type of system will help to ensure that multiple organizations and resources are effectively and systematically made available to meet individual school and LEA schoolwide program needs.

EXAMPLE:

WASHINGTON SCHOOL SUPPORT TEAMS/DISTINGUISHED EDUCATORS:

The selection of 25 Distinguished Educators will be through self-nomination and solicitation from Washington's Talent Bank (includes Apple Award winners, Teacher of the Year, etc.). The selection will be based on a dozen criteria including multiple placement experiences, demonstrated experience working with adults, and a three-year commitment.

Training and supervision will be coordinated through nine education service districts' regional centers. The initial three-day training will take place in the summer at a community college. Topics for training include State reform, IASA programs, group facilitation, the change process, and others. Training will continue throughout the year.

Distinguished Educators will assist schools identified as schoolwide or in need of school improvement as individuals or teams and matched by the needs of the school. An effort will be made to assign Distinguished Educators regionally.

Each Distinguished Educator will be given a laptop to encourage contact with schools, to communicate with each other to avoid isolation, to be on-line with supervision units, and to be on-line with the technical assistance center. They will be able to access curriculum and instruction information for their schools.

Contact: Dr. Mary-Elizabeth (Mitzi) Beach
(206)753-3220

EXAMPLE:**THE PENNSYLVANIA SCHOOL SUPPORT SYSTEM**

Pennsylvania has established a system of support for schoolwide programs and schools in need of school improvement. Since the system's primary mission is to provide technical assistance, the Division of Federal Programs is working cooperatively with Research and Information Services for Education (RISE) and the National Diffusion Network (NDN).

In order to establish a client-based support system, school district personnel have been asked to provide names of organizations and/or persons who are knowledgeable in one or more of these areas: 1) successful schoolwide programs; 2) comprehensive school reform; 3) research and practice in teaching and learning; and 4) effective strategies for improving educational opportunities for low-achieving students. These organizations/persons may include representatives from institutions of higher education, persons from regional educational laboratories or research centers, and individual or group consultants.

Once nominated for the School Support System cadre, the candidate(s) will be asked to provide additional information in a *Candidate's Profile* that will help any school district select appropriate persons with specific knowledge and expertise as a member of its School Support Team (SST). An SST directory and the compilation of the *Profiles*, will be sent to a school district requesting information about persons who can assist with a schoolwide or school improvement program. An 800 number for the School Support Team System will also be available for easy access to information.

When the parameters of the School Support services have been established, the school district and SST enter into an agreement that outlines the workscope and the amount of the SST financial reimbursement. Additional team members may be added on a short-term basis for specified technical assistance.

The Division of Federal Programs, in cooperation with RISE, will provide a training program for SST members. After the completion of the SST's work, the school district personnel will respond to a questionnaire about the implementation of the SST process and the effectiveness of the team members in their selected roles. In this way, the School Support System will be an evolving process.

Contact: Mr. James M. Sheffer
(717)783-9161

ACCOUNTABILITY

Schoolwide programs enable schools with high concentrations of poverty to utilize their many funding sources to provide a comprehensive educational program for all of their children. The goal for this coordinated approach is to enable all children, including those furthest behind, to reach the challenging academic standards established for all children. Under a thoughtful, creative plan that addresses the statutory components, it is hoped that schoolwide programs will be an effective vehicle for providing many target populations with a challenging, cohesive program.

To the extent that schoolwide programs are not effective, however, schoolwide programs are no longer subject to a three-year accountability test. Rather, the same standards, assessments, and school improvement provisions that apply to all Part A-funded schools apply to schoolwide programs. In other words, they are not required to be discontinued.

On a broader note, the Department is directed by section 1501 of Title I to examine, in a national assessment of Title I programs, how well schools are providing participating children an enriched and accelerated educational program through schoolwide programs and how schoolwide programs are meeting the needs of children from migratory families. In this assessment, the Department will examine how the authority contained in the schoolwide program notice (at the end of this chapter) has been implemented.

EXAMPLES OF SUCCESSFUL SCHOOLWIDE PROGRAMS

Although there are many successful and innovative schoolwide programs throughout the country, to provide some insight into how some of these look, a few examples are provided below.

EXAMPLE:

In addition to operating a schoolwide program during regular school sessions, a Title I middle school uses supplemental funds to extend the school year by providing intersession programs year-round. These intersession programs emphasize applications of academic skills in the world outside of schools. Three strands focus on experiencing language and literacy through the Arts, investigating the applications of mathematics and physics in agriculture and industry, and understanding history and social sciences with business and community organizations. The program is hands-on and involves considerable activity outside of the school designed to draw linkages from classroom activities to real world applications. Students receive credit based on participation and completion of project-based assignments.

EXAMPLE:

The number of LEP students in one small Midwest city has grown rapidly in recent years. Two schools in low-income neighborhoods were using Title I funds to hire bilingual paraprofessionals to help Spanish-speaking Title I students with language arts and mathematics at learning centers in the regular classroom. Teachers felt the program was working fairly well, but students were not able to receive help outside of language arts and mathematics; the small number of paraprofessionals could not keep pace even with that limited range of responsibility. The superintendent and the board of education saw an opportunity to begin a more integrated approach through the schoolwide process. The schools' principals used schoolwide planning time to assess their staff members' abilities to teach in both English and Spanish, began a professional development program for bilingual paraprofessionals and their credentialed colleagues, and made staff changes to supplement staff members' dual-language instructional capabilities. The parent involvement elements of Title I were redesigned to better engage language minority parents in the education of their children and to educate the parents about the techniques of bilingual education. The results were greater parental involvement in literacy activities for children in the home language and better content learning throughout the (now bilingual) curriculum.

A book entitled, An Idea Book for Educators: Implementing Schoolwide Projects, was prepared for the U.S. Department of Education. This book is a resource for policy-makers and practitioners, designed to show how local initiative and determination can become a foundation on which to plan future programs to ensure that all children meet high academic standards. The book also includes profiles of 12 elementary schoolwide programs along with information for readers to contact the schools if further information is wanted. Copies of some of these profiles are included at the end of this section. To obtain a copy of this book, call (202)401-0590.

ENGAGING THE COMMUNITY IN LEARNING

Ezequiel A. Balderas Elementary School

Fresno, California

OVERVIEW

Teachers at Balderas set high academic standards in core subjects for K-6 students, who learn the concepts of literacy and numeracy in the context of daily story telling and investigations in science and social studies, followed by related pencil-and-paper or computer work. Reading, writing, and mathematics are included in every appropriate interdisciplinary lesson. Multidimensional lessons building on the language, skills, and concepts that students already know allow teachers to provide learning opportunities that serve native English speakers and those with limited English proficiency equally well. The education program includes an electronic infrastructure, school-business partnerships, and intensive staff development designed to help teachers build on the special resources of a multicultural and multilingual student population.

SCHOOL CONTEXT

Fresno Unified School District built Balderas as a year-round school to serve the district's new and growing multicultural population in Fresno. Ninety-eight percent of the students belong to ethnic minorities: 59 percent Asian, 28 percent Hispanic, and 11 percent African American. Early in 1991, the district used a new approach to choose a principal for Balderas with a strong record of successful innovation, a commitment to participatory management strategies, and a history of productive collaboration with the business community. Given a mandate for change from the district supervisor and four months lead time, the principal used observations as well as interviews to choose her staff and worked with them to create ground-breaking programs for the students who arrived in August.

Balderas serves 1,100 students, of whom about 750 are on campus during any term. Ninety-four percent of the students receive free or reduced-price lunches, and 70 percent have limited English proficiency (LEP).

MAJOR PROGRAM FEATURES

ACADEMIC FOCUS. Balderas emphasizes hands-on learning, interdisciplinary units, a whole-language approach to reading and language arts, and development of both basic and advanced skills in core subjects. Using state and district curriculum guides keyed to California's curriculum frameworks, teachers provide students with activities that promote language development in both English and primary languages and acquisition of grade-level knowledge and skills in other subjects. Beginning in preschool and continuing to the sixth grade, classes may regroup into same-language clusters, led by an assistant, to read and promote discussions in the students' primary language. Teaching assistants fluent in the students' primary languages rotate among classrooms.

Teachers delay formal instruction in reading until the second grade but embed early literacy lessons in studies in the content areas. For example, students learn the concepts of literacy and numeracy in the context of daily story telling and investigations in science and social studies, followed by related pencil-and-paper or computer work. Reading, writing, and mathematics are included in every appropriate interdisciplinary lesson. Multidimensional lessons building on the language, skills, and concepts that students already know allow teachers to provide learning opportunities that serve native English speakers and those with limited English proficiency equally well.

All students keep portfolios of their work, often including drawings, writing samples, and journals. Content-based activities, often involving cooperative learning, promote learning of academic content, reflection, language development, and task engagement. To ensure that multi-language students have the academic support they need, students belong to triads—cross-age groups of students—that meet after school and at other times during the year to work together on homework and class projects. In these “afterschool” groups, each student works daily with two others who speak the same language and helps them develop and apply their English language fluency.

To ensure that language-minority students have sufficient academic support they belong to triads—cross-age groups of students who speak the same language—that meet throughout the year to work together on homework and class projects.

PLANNING AND DESIGN. The programs are based on these principles: (1) student, staff, and parent empowerment; (2) individual responsibility for learning; (3) active learning experiences; (4) high expectations; (5) interdependence; (6) character development; and (7) collaboration with community partners in education. Business partners from Dow Chemical, Pacific Bell, the Fresno Bee, and Continental Cablevision contribute their technical expertise in ongoing task force work aimed at making Balderas' electronic infrastructure a model for the nation.

ORGANIZATIONAL/MANAGEMENT STRUCTURE. Balderas follows a year-round "90/30" program that divides students into four tracks of 250 students. Each track attends school for three months, followed by a month-long vacation while students from another track rotate in. In addition, extracurricular programs extend the school day two hours beyond the district's norm. During the first hour, all students work on homework in multi-grade groups. During the second hour, native speakers offer primary language instruction in Spanish, Hmong, and Khmer; approximately one third of the students attend these classes.

Students in all grades belong to triads—groups of first-, third-, and fifth-graders or second-, fourth-, and sixth-graders—that meet during the afterschool homework period and at other times during the year. Within each afterschool group, each student works every day with two others who speak the same language. In addition, teachers keep classes for two years.

PROFESSIONAL ENVIRONMENT. To meet state certification requirements for teachers of limited-English-proficient (LEP) students and to cultivate a knowledgeable and cohesive faculty, Balderas' principal negotiated with California State University, Fresno (CSUF) to teach a series of graduate courses organized to address the specific professional needs of Balderas' faculty. Teachers attended class for six weeks before school opened and studied the languages and cultures of students, among other general topics related to teaching LEP students. In 1991-92, they completed 180 hours of formal instruction in sessions planned during regular staff development time, after school, and on Saturdays. Virtually all Balderas teachers now possess the Language Development Specialist credential—a situation that is rare in the district and in the state.

In a precedent-setting arrangement with CSUF approved by state and district administrators, Balderas paid for the graduate-level course work with categorical funds. All teachers received inservice credit for their participation; those who wished to apply the course work to a master's degree program and earn CSUF graduate credit paid a reduced rate for tuition and completed additional assignments. Program evaluation data collected after the first year indicate that participants considered the course work relevant to the demands of their work, and after passing the certification examinations, teachers' classroom experience confirmed that

they had received the solid foundation of knowledge and skills required to meet the challenges of real teaching.

CULTURAL INCLUSIVENESS. The study and celebration of students' cultural resources influence every aspect of daily life at Balderas. Native language speakers provide daily and weekly afternoon and evening extracurricular classes in primary language literacy to all interested students and parents. Community leaders hold concurrent sessions of parent meetings and programs for each language group to involve all parents, using bilingual members to coordinate and unify parent planning. The four informal "pavilion" areas surrounding the media center in the large central courtyard of the school each feature a mural that captures important values of a certain culture: The Cambodian pavilion portrays the temple at Angkor Wat; the Mexican shows central characters in Mexican history; the Hmong summarizes the journey from Laos to Fresno; and the American focuses on the Explorer spacecraft, among other things the symbol of the Balderas Explorers. During the 1992-93 school year, the Balderas community celebrated the Hmong, Cambodian, and Lao New Years, African-American History Month, and Cinco de Mayo, in addition to having a multicultural fair.

PARENT AND COMMUNITY INVOLVEMENT. Parents of every cultural background actively participate in Balderas events; approximately 80 percent attend the monthly parent education workshops regularly. When a school site council was elected, hundreds of members of each language group attended pre-election meetings conducted in their own language and shared responsibility for choosing their group's representative. School-home communications are routinely translated into five languages and followed up with calls to parents who cannot read in any language. Two English classes are offered at the school for parents, and proposals are being developed to solicit funding for even more extensive parent education and family support programs. Each month the school offers a parent workshop that is given in the languages spoken by school families. Each group has a native-speaking presenter and an English-speaking teacher as a resource. According to a district administrator, the rate of parent and community volunteerism at Balderas is remarkably high, and the volunteer core includes many retirees and college students who work every day. At the parents' request, Balderas has a monthly open house during which the school's programs are explained, student guides take visitors on a tour of the building, and parents eat lunch with their children.

In addition to involving parents in the school, Balderas' principal continues to build relationships with important members of business and industry. Engineers from Dow, Pacific Bell, Continental Cablevision, the Fresno Bee, and other companies meet at least monthly to identify promising technologies, educate school staff about their applications to teaching, and plan ways to install them at Balderas. The school is already far ahead of others in Fresno with

its computers, voice mail, and other electronic equipment, but even greater things are planned—fiber optics, a satellite dish, and networks with other cities and countries. The principal often attends management training seminars offered by these companies for their own personnel and makes presentations about her school to their boards.

EVIDENCE OF SUCCESS

Because of the care taken in planning and staffing this school's complex programs, Balderas has made a strong start, as shown by substantial support from members of the community, businesses partners, and higher education. First-year math and reading scores exceeded district norms (although some language-dependent subjects fared less well). By June 1993, Balderas had achieved first place in the district for student attendance—more than 99 percent of the students arrive at school on time regularly. Despite substantial risk factors often associated with transiency, Balderas reduced its transiency rate by one quarter from its first to its second year. At the end of the second year, 50 percent of the parents gave the school's overall performance an "A" rating, and 30 percent gave it a "B" rating. Community pride in the school is evident—unlike other schools in the area, Balderas remains free of graffiti. In October 1992, Balderas received an "A+ for Breaking the Mold" award from the U.S. Department of Education, and in April 1993, it was named by Redbook magazine as one of the 177 best schools in the country, based on a review of evidence by a panel of experts.

A HOLISTIC APPROACH TO LANGUAGE AND CULTURE

Ganado Primary School

Ganado, Arizona

OVERVIEW

Ganado has been a schoolwide project since 1985, but in 1990 the staff used the updated schoolwide project guidelines to revitalize and strengthen the quality of its academic program. Today, Ganado's Chapter 1 schoolwide program supports a holistic approach to education through a school-within-a-school format, intensive staff development, and parent involvement. The curriculum is designed to integrate the Navajo language and culture within disciplines and to promote literacy and language development.

SCHOOL CONTEXT

Ganado Primary School, located in Dine' Bi Keyah (Navajoland), enrolls approximately 450 children in grades K-2. Ninety-eight percent of students are Navajo; 58 percent of incoming students have limited English proficiency; and 23 percent speak neither English nor Navajo fluently. The student transiency rate is 20 percent, and 85 percent of students qualify for free or reduced-price lunch.

MAJOR PROGRAM FEATURES

ACADEMIC FOCUS. The academic program combines the goals, values, and traditions of Navajo culture with recent instructional and curriculum reform initiatives. Through its schoolwide project, Ganado has developed a more integrated program of reading, writing, and problem solving; Chapter 1, special education, and English as a Second Language (ESL) programs are fully integrated into the classrooms.

Literacy is the focus of Ganado's child-centered curriculum. Programs are structured to take advantage of children's natural ability to make sense of the world and to model an integrated approach to language arts. They are based on the following four premises: (1) children should be immersed in a literature-rich environment; (2) reading, writing, and vocabulary are interrelated processes; (3) basic skills should be taught while children are actively engaged in reading, writing, and vocabulary learning, rather than through isolated practice; and

(4) higher-order thinking and reasoning skills should be integrated within reading, writing, and vocabulary lessons.

An uninterrupted block of time, scheduled every morning, allows students to work individually or in groups with teachers and assistants or to participate in a newspaper club or fine arts program (television production club). First- and second-graders also attend special classes in the Navajo language twice a week. Using activities such as plays, writing, and arts activities, children learn to converse, read, and write in Navajo. Approximately half the teachers are Navajo, as are most assistants and support staff.

Beginning in 1992, Ganado adopted the Collaborative Literacy Intervention Project (CLIP), a reading intervention program that targets the lowest 20 percent of first-grade readers. After one year in the program, most students advanced to the level of top-achieving readers. Adjunct activities, such as the Learning Enrichment Acceleration Program (LEAP), provide fine arts activities for second graders, including drama, music, visual arts, and dance. Through a literacy program sponsored by the U.S. Postal Service known as "Wee Deliver," students manage a mini-postal system within the school that distributes an average of 85 letters per day written by students to friends, teachers, or the principal. In the school's publications laboratory, students have created, typed, formatted, and bound almost 700 books. Programs sponsored by Pizza Hut and Reading is Fundamental, Inc. also promote literacy. All students have daily access to classroom computers and computer laboratories. Since beginning the schoolwide project, Ganado has purchased 137 new computers and plans to add at least 20 more during the 1993-94 school year.

With Chapter 1 and district funds, Ganado also provides counseling programs for students and families that address topics such as drug prevention, addiction, co-dependency, parenting, marriage, and family issues.

ORGANIZATIONAL/MANAGEMENT STRUCTURE. Ganado adopted a school-within-a-school organization in 1988 to increase collaborative planning and cooperation among teachers. There are three school units—the South School, the East School, and the West School—each of which operates as a family composed of 130-140 students and nine teachers.

Literacy is the focus of Ganado's child-centered curriculum. Programs take advantage of children's natural ability to make sense of the world and model an integrated approach to language arts.

Students are assigned randomly to one of the three schools when they begin at Ganado, and unless parents request a change they remain with the same teachers for all three years.

The South School, emphasizing team planning, began in 1988-89 with nine teachers who volunteered to pilot an experiment in team-implemented curriculum and instruction. The collaborative planning and cooperation among South teachers met with such success that another group of teachers established the East School in 1990. East School has two types of nontraditional classes: six multi-age classes (K-2) and three "Project Success" classes, one for each grade. In Project Success, special education students are matched with an equal or larger group of accelerated students. A team with one regular and one special education teacher teaches the heterogeneous group of special needs students. The West school, more traditionally organized, was staffed by the remaining nine teachers who gradually have begun to incorporate into their program some of the innovations used by their colleagues in the South and East Schools.

In the three school units, Chapter 1 teachers and aides serve all children, and Chapter 1 funds have enabled smaller classes and individual attention to children schoolwide. All regular teachers are certified to teach ESL or bilingual classes.

STAFF DEVELOPMENT AND PARENT INVOLVEMENT. Many other changes encourage collaboration and communication at Ganado. Teachers meet monthly to discuss schoolwide and subschool issues, and representatives of the three schools meet monthly to address concerns and issues. A special committee of teachers, assistants, and key staff meets monthly with the principal to offer feedback and contribute to educational decisions. Staff are encouraged to attend classes at area colleges, attend workshops, and visit other schools. Within the school, teachers have time to visit colleagues' classrooms and discuss curriculum issues, and they attend workshops and weekend seminars to explore selected topics in depth. Every six weeks, teachers hold "curriculum conversations" with colleagues that focus on specific areas of curriculum and instruction.

A full-time instructional resource teacher at the school serves as a mentor and coordinates staff development, curricula, schoolwide activities, and two resource rooms. Staff development supports instructional priorities identified by the principal and teachers. For example, when the CLIP reading intervention program was implemented in 1992, Ganado arranged for a consultant to train teachers; by the end of the 1993-94 school year, 20 of 25 classroom teachers are expected to be certified in the program.

Through Ganado's volunteer program, 16 parents assist in classrooms and may attend weekly parent education classes taught by the school counselor. The parent leader of the teacher assistant group also participate in a schoolwide advisory committee.

EVIDENCE OF SUCCESS

Ganado students have shown overall achievement gains, although not always at the rate sought by school planners. Absences from school among "at-risk" students—those who missed 15 or more days the previous year—decreased 36 percent, and the daily student attendance rate is 94 percent. At-home reading levels have doubled since 1990-91. In a fall 1992 schoolwide survey, 50 percent of parents gave Ganado and its programs an "A" rating; 38 percent gave it a "B"; and 12 percent gave it a "C."

Ganado has received numerous state and national awards for its initiatives. It has regularly received the Arizona Quality Programs Award for excellence in academics and administration. In 1990, the school was selected as a National Lead School by the National Council of Teachers of English in their Centers of Excellence for Students at Risk program. In 1990, two of its programs, Project Success and Taking Turns, won Exemplary Curriculum Program Awards from the Arizona Association for Supervision and Curriculum Development, and in 1993 Ganado was named Arizona's Exemplary Reading Program by the Arizona Reading Association.

COORDINATING SERVICES TO PROMOTE LEARNING

*Lingelbach Elementary School
Philadelphia, Pennsylvania*

OVERVIEW

Since 1988-89, when Lingelbach Elementary School implemented a Chapter 1 schoolwide project, student learning has been enriched by a combination of support and educational services. The project's philosophy—that every child must have the opportunity and appropriate support to succeed in school—is backed by a commitment that students will achieve high academic standards through an interdisciplinary, thematic curriculum; a unified language arts program; emphasis on higher-order thinking skills and whole language; cooperative learning; and parent involvement. The school seeks to provide a strong, content-based program for all students. Regularly scheduled meetings enable pairs, teams, and groups of staff and parents to discuss each child's progress. As a result, standardized test scores have steadily climbed and students have demonstrated improved performance.

SCHOOL CONTEXT

Lingelbach enrolls about 400 students; almost all are African American (compared with 65 percent districtwide), and 78 percent receive free or reduced-price meals. The school offers two Head Start classes and two full-day kindergartens and serves grades 1-5. The student mobility rate was high when the schoolwide project started, because of nearby shelters for homeless and abused people and apartment buildings rented on a monthly basis. The large shelters have since closed, but Lingelbach continues to serve a large homeless population.

MAJOR PROGRAM FEATURES

ACADEMIC FOCUS. Lingelbach teachers gear their ambitious academic program to students at different achievement levels, using cooperative learning and in-class assistance from support teachers and aides to ensure that students attain proficiency in core subjects. Using the Communication Arts Network, students learn reading, writing, and language arts by publishing literary magazines and producing video programs. Teachers use whole-language approaches in language arts and invite parents to monthly "author teas," where students read

aloud their creative writing. Lingelbach is Philadelphia's pilot site for the Reading Recovery program, in which a specially trained teacher works individually with first-graders who have trouble reading. In mathematics, the use of manipulatives improves concept learning, problem-solving strategies, conflict resolution, and higher-order thinking skills as well as verbal articulation. A math specialist and program support teacher help students develop computer knowledge.

School documents state that "success is achieved by creating reasons and needs for learning through the arts." In pursuit of this philosophy, children create videotapes, books, poems, collections, a literary magazine, and a school newspaper. Other special programs include violin lessons, which begin in kindergarten. A National Endowment for the Arts grant supports learning through the arts and architecture, and computers are used in each classroom to promote growth in critical thinking.

PLANNING AND DESIGN. Lingelbach teachers and parents designed the schoolwide project in 1987-88 through consensus, in an attempt to combat low achievement, low grades, and poor attendance among students. The planners met regularly until the program was implemented in 1988-89, and they continue to meet to diagnose the program's changing status and make adjustments. At the suggestion of teachers and parents, the project included smaller classes and extra teachers to provide special instruction, enrichment, and reinforcement for transient students. The staff, parents, and school leaders meet weekly and monthly to evaluate the project's progress toward its goals.

Using daily informal discussions, reduced class sizes, and classroom aides, teachers work with students in regular classes to promote achievement. Lingelbach coordinates its services through project team and grade meetings, with the goal of preventing early school failure. In addition, teachers of students with severe problems meet with the school psychologist, the principal, resource teachers, and other specialists on a Pupil Support Committee. This committee designs individual programs for at-risk students and follows their progress carefully, adjusting services as changing circumstances require. An afterschool "homework club," supervised by teachers and aides, gives homeless and latchkey children a safe and orderly place to complete assignments. A support teacher monitors attendance, advises colleagues, and tutors the lowest-achieving students.

PROFESSIONAL ENVIRONMENT. Staff development is provided at the school (at least 20 hours each year) and also districtwide (10 hours each school year), to improve teachers' knowledge of whole-language teaching, assertive discipline, and cooperative learning. Staff members assess their own needs and formulate a staff development schedule with the principal. Staff development activities often include the entire staff; classroom assistants also attend

school-site and district-level training sessions twice a year. Topics are decided at staff and leadership team meetings.

PARENT AND COMMUNITY INVOLVEMENT. Lingelbach's partnerships with community groups and institutions add breadth and depth to its regular programs. Faculty and students from the University of Pennsylvania worked with Lingelbach teachers to devise new strategies for literature-based reading instruction. Drexel University helps develop and implement plans for using computers to promote improvement in students' critical thinking skills. Senior citizens' groups send volunteers to the school each week to tutor and read aloud to students. A nearby church has adopted a school, providing before- and after-school care for students at a nominal cost. Cable companies provide facilities for film editing of student productions. A bookstore owner, formerly a middle school principal, has taught the kindergartners about cuneiform writing and helped them create their own books of hieroglyphics. Through her efforts, the kindergarten viewed a cuneiform display shown only to selected audiences. She also has helped the school collect multicultural fairy tales.

Parents participate on committees and attend monthly meetings for updates on school programs. In addition, the school sponsors a parent coordinator who, during home visits to families, advises on parenting and homework assistance.

Teachers encourage students to succeed by creating "reasons and needs for learning" through the arts. Students create videotapes, books, poems, "museums," a collaborative literary magazine, and a school newspaper.

EVIDENCE OF SUCCESS

Since the schoolwide project began, Lingelbach's students' scores on standardized tests have improved almost 18 NCE points in math and 9 in reading. The number of children who qualify for Chapter 1 services academically has decreased almost 13 percent. The percent of children earning A's, B's, and C's has increased, while the percent earning D's and F's has decreased. Attendance has increased on average from 85 percent to 93 percent.

CREATING "THE ULTIMATE COMMUNITY SCHOOL"

Snively Elementary School

Winter Haven, Florida

OVERVIEW

The secret to success is doing things schoolwide [because] you will never change with just one teacher doing things You need the entire school and parents together You need to learn what works and what doesn't.

— *Principal, Snively Elementary School*

Through a schoolwide project that began in 1989, teachers, parents, and administrators revamped Snively Elementary School to provide learning experiences that help all students meet higher standards of achievement and embrace parents in the education process. The project introduced interdisciplinary, thematic instruction using a curriculum written by teachers; established an alternative assessment process; extended the school year; and reduced class size in all grades. Snively emphasizes collaboration and became the focus of community activity through adult education, community health services and recreational facilities, home visits, and rewards for parent volunteers.

SCHOOL CONTEXT

Snively is located in a small rural town in central Florida divided by an interstate highway. Approximately 400 students start school each September; that number climbs to about 500 when migrant families join the community. The student population is almost equally divided between Anglo and Hispanic children; African Americans make up the remaining 1 percent. One-third of the students move across district or state lines at least once during the year. Poverty is high, with 95 percent of the students receiving free or reduced-price lunch. Many students have come from Mexico, and about 20 percent of the total student population have limited English proficiency.

A districtwide committee meets annually to oversee the Chapter 1 program. The school operates under site-based management, with the Chapter 1 program coordinated by the Effective School Team (EST) that governs decision making at Snively.

BEST COPY AVAILABLE

The decision to give teachers broad authority under the schoolwide program is strongly supported by the district Chapter 1 director, who states: "Give the money to teachers and let them do with kids what is needed They know the needs, but frequently we don't ask them for ideas." But the same administrator cautions that successful schoolwide projects require a clear structure and long-term planning: "Schoolwide needs to be thought out It must still reach the Chapter 1 children."

MAJOR PROGRAM FEATURES

ACADEMIC FOCUS. Snively staff create an educational climate in which individual talent can be discovered and developed. The school's philosophy emphasizes the importance of achieving high academic standards, physical growth, and emotional stability, recognizing that these can best flourish in an atmosphere of acceptance and understanding. Students follow an interdisciplinary core curriculum and are assessed by a teacher-developed evaluation after completing each curriculum unit. A detailed scope and sequence chart lists specific standards for achievement at each grade level; for example, third-graders learn to organize paragraphs, speak effectively before a group, read a thermometer, and add and subtract decimals. Teachers define thematic units for each grade level; sample themes for fourth-graders are "Mexico," "the United States," and "Native Americans." Fourth-graders begin the school year with a four-week unit of study on Mexico. They study Native American culture, civilization, history, and contributions to architecture, mathematics, literature, and art. The unit culminates in a day-long celebration of Mexican Independence Day and cultural presentations. Art and music teachers incorporate their instruction into this content-based unit. Third-graders study the history and geography of the U.S.-Mexican frontier, and other grades study Mexican family traditions and customs.

The program also includes "Step Ahead Days," during which students apply their learning to real-life situations. At the beginning of a unit on economics, each class adopts a particular role: job interviewing, production, or bartering. The classes work with each other so that all students learn about each role and understand the concepts before actually studying the subject. Sometimes, classes save the exercise until the end of the unit; after a unit on the American Revolution, classes representing different states re-enacted historical scenes. Other projects include a unit on transportation (which included a visit to the school by a helicopter), a Medieval festival, and visits to businesses.

Teachers revise the curriculum constantly to ensure that it is consistent with high academic expectations and is appropriate for students. The Chapter 1 director says teachers are so committed to their collaboration that they work on Saturdays and on their own time to develop new ideas. "When you have teachers revise the curriculum, they have ownership

because it was developed based upon needs they perceived," she says. "This is what makes it work."

Snively offers two early-intervention prekindergarten programs funded by the state and in 1993-94 will add two more programs funded by Head Start. A state-funded program, First Start, supports two regular and two portable classrooms and two parent educators; one portable operates as a family resource center to help families with children below the age of two. The school also has reading development program called "Early Discovery," which is targeted to students identified by teachers and testing at the end of kindergarten. Students begin the program in first grade, leaving the class for half an hour each day for individual instruction; each semester, the Early Discovery teacher helps a different set of students. The program has been so successful that the school plans to expand it to the second and third grades.

The school's philosophy emphasizes the importance of achieving high academic standards, physical growth, and emotional stability—recognizing that these can best flourish in an atmosphere of acceptance and understanding.

PLANNING AND DESIGN. Eight years ago, Polk County officials considered closing Snively—which some school planners described as "the dirtiest and worst school in the district." The Chapter 1 program was "a nightmare," with participants in grades 4-6 grouped into one class to receive Chapter 1 services all day long. But community pressure forced the district to keep the school open. Under the leadership of a new principal in 1988, teachers and administrators developed a schoolwide project plan to improve the entire school. The district office provided technical assistance and fostered communication between Snively staff and other schoolwide projects.

Faculty, parents, and community representatives on Snively's EST met frequently for six months to plan the project. Teachers rewrote the curriculum to follow an interdisciplinary, thematic unit approach and visited parents at home to solicit support for the new project. The school used Chapter 1 funds to hire additional teachers, pay for professional development, and purchase new materials. The new staff reduced the teacher-student ratio to 1:18 for primary grades and 1:20 for upper grades, achieving a class size that teachers believed would better serve the needs of all students. After noticing a lack of recreational opportunities for local children—and crowded summer tutoring programs at a nearby church—administrators used an

RJR Nabisco Foundation Grant to extend the school year through July. (The Nabisco grant was obtained after planning had begun for the schoolwide project, but both were implemented in 1989.)

Snively's schoolwide project promotes continuous professional development based on teachers' needs and interests, multiple roles for teachers, shared decision making, and consultant and peer support. With implementation of the schoolwide project, teachers began meeting one day each month to collaborate on planning.

CULTURAL INCLUSIVENESS. An English as a Second Language (ESL) program features one full-time teacher and three paraprofessionals. All Snively teachers, except for the most recently hired, have ESL training. ESL students participate in a two-hour pullout program every day; when these students are in the regular classroom, they are assisted by an ESL aide. Special education is conducted in two resource rooms.

Unit-related field trips also help students understand other cultures. A visit to St. Augustine shows students Spain's role in Florida's history. Disney's Epcot Center provides a glimpse of many cultures, including Mexico and its rich artistic heritage. A trip to a Spanish restaurant in Tampa enables both Anglo and Hispanic students and parents to experience Spanish food and atmosphere. In addition, Snively's library has a growing collection of books in Spanish, including works by Latin American authors and biographies of Latino leaders. Those books are among the most popular in the library. ESL students celebrate their heritage with a presentation of posadas and a pinata during the winter holidays; for Cinco de Mayo, they present an exhibit to teach other students about the holiday. They also organize a popular tortilla-making contest. Teachers receive training in cultural differences through inservice classes and professional literature. Evening school programs often feature Mexican songs and music, which increase parent involvement and attendance.

PARENT AND COMMUNITY INVOLVEMENT. Strong community outreach and parent participation guide Snively's program. Every teacher visits the home of every child he or she teaches, allowing open communication with each family and better assessment of individual needs. Parents are encouraged to become involved in all aspects of the school, including an adult education program, and are motivated to participate in the school by a coupon-redemption program in which they earn coupons—redeemable for food, clothing, or household items at the school-operated family center—by attending their child's class, participating on field trips, or other volunteer efforts. According to the principal, between 60 and 70 service clubs, businesses, and agencies have adopted the school, with many donating surplus items that parents can purchase with their coupons. Last year, parents volunteered more than 5,000 times at the school—an average of 10 times per student. Parents also receive a monthly calendar of school activities.

Snively offers free GED/ABE classes for adults in the community, which drew 130 students last year. More than 100 adults also participated in an ESL class, and some recent adult graduates are now planning to attend college. "All we ask is for parents to be an active participant with their child," says the principal. "This has encouraged them to go to GED and ABE [adult basic education] and to understand the importance of school."

Snively's other efforts to become what the principal calls "the ultimate community school" include providing a state-funded community clinic that offers immunizations, physical exams, and other services by state health department workers. The Community Aggressive Reclamation Effort (CARE), a state-funded program that targets local communities with severe needs, also has designated Snively as the location for a new community recreation center that will include a park with restrooms, lights, and playing fields.

EVIDENCE OF SUCCESS

More than half the students at Snively score above the 50th percentile on nationally standardized tests. Between the 1991-92 and 1992-93 school years, students across grades 2-6 showed an average NCE gain of 9.9 in reading, compared with an average 4.7 NCE gain for other Chapter 1 programs in the district. Snively students in the same grades had an average gain of 7.4 NCEs in mathematics. The gain was most dramatic in the third grade. Seventy-one percent of Snively's first-graders meet district standards, compared with 48 percent in other schools. A high percentage of parents and teachers responding to a school survey said that administrators believe that all children can learn. Most teachers and parents also agreed that school rules and expectations are clearly defined and communicated daily through home visits, letters, conferences, and meetings. In 1992-93, the U.S. Department of Education recognized Snively among schools having effective compensatory education programs.

federal register

Thursday
September 21, 1995

Part XIII

Department of Education

Part A of Title I of the Elementary and
Secondary Education Act of 1965, as
Amended; Notice

DEPARTMENT OF EDUCATION**Part A of Title I of the Elementary and Secondary Education Act of 1965, as amended**

AGENCY: Department of Education.

ACTION: Notice exempting schoolwide programs under Part A of Title I of the Elementary and Secondary Education Act of 1965 (ESEA), as amended, from statutory or regulatory requirements of other Federal education programs.

SUMMARY: The U.S. Secretary of Education (the Secretary) exempts schoolwide programs under Part A of Title I, ESEA, from complying with statutory or regulatory provisions of most Federal education programs, if the intent and purposes of those programs are met in the schoolwide program. This notice complements the final Title I regulations that were published in the **Federal Register** on July 3, 1995 (60 FR 34800). Those final regulations explain schoolwide programs in greater detail, including eligibility requirements and program components. This notice identifies which Federal education program funds and services may be incorporated in a schoolwide program and provides guidance on satisfying the intent and purposes of the programs included.

FOR FURTHER INFORMATION CONTACT: Mary Jean LeTendre, Director, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 600 Independence Avenue, SW (Portals Building, room 4400), Washington, D.C. 20202-6132. Telephone (202) 260-0826. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:**Schoolwide Programs in General**

One of the most promising changes in the recent reauthorization of Title I, ESEA, is the expansion of schoolwide programs. A schoolwide program permits a school to use funds under Part A of Title I to upgrade the entire educational program of the school and to raise academic achievement for all children in the school, in contrast to a Title I targeted assistance program, in which Part A funds may be used only for supplementary educational services for eligible children. Under the reauthorized ESEA, this authority has now been expanded to include other Federal education funds (see the

heading "Inclusion of other Federal Funds").

Schoolwide programs grew out of research about what makes schools work for disadvantaged students. Repeated findings show that the principals, teachers, and other staff in highly successful schools develop and carry out comprehensive schoolwide reform strategies and expect high academic achievement from every child. They establish safe environments that are conducive to learning and support enriched instruction in an expanded core of subjects. Over the years, researchers have documented that when the entire school is the target of change, schools serving even the most disadvantaged youth can achieve success.

Section 1114 of Title I authorizes a school with a concentration of poverty of at least 60 percent in the 1995-96 school year and 50 percent in subsequent years to use funds under Part A to operate a schoolwide program and upgrade the entire educational program in the school. Under section 1114(b) of Title I and § 200.8(d) of the final regulations, each schoolwide program must include a number of specific components. A schoolwide program school, for example, must conduct a comprehensive needs assessment of the entire school to determine the performance of its children in relation to the State's challenging content and performance standards; implement schoolwide reform strategies that are based on effective means of improving the achievement of children and that address the needs of all children in the school; use highly qualified professional staff; provide professional development for teachers and other staff; and implement strategies to increase parental involvement. Under a schoolwide program, a school is not required to identify particular children as eligible to receive Part A services, demonstrate that the services provided with Part A funds are supplemental to services that would otherwise be provided, or document that Part A funds are used to benefit only the intended beneficiaries.

Inclusion of Other Federal Education Funds

For the first time, a schoolwide program school may also use funds from other Federal education programs in addition to Part A funds to upgrade the entire educational program. Specifically, section 1114(a)(4) of Title I authorizes the Secretary, through publication of a notice in the **Federal Register**, to exempt schoolwide

programs from statutory or regulatory provisions of any other noncompetitive, formula grant program or any discretionary grant program administered by the Secretary (other than formula or discretionary grant programs under the Individuals with Disabilities Education Act), if the intent and purposes of those programs are met.

This authority affords a schoolwide program school significant flexibility to serve better all children in the school and their families through comprehensive reforms of the entire instructional program, rather than by providing separate services to specific target populations. The Secretary emphasizes that a school with a schoolwide program must address the needs of all children in the school, particularly the needs of children who are members of the target population of any other Federal education program that is included in the schoolwide program.

Through this notice, the Secretary authorizes a schoolwide program school to use funds from most Federal education programs administered by the Secretary (including programs under the School-to-Work Opportunities Act, which is jointly administered by the Secretary and the U.S. Secretary of Labor) to support its schoolwide program. This authority also extends to services, materials, and equipment purchased with those funds and provided to the school. To provide schoolwide program schools maximum discretion in using resources from Federal education programs to their best advantage, the Secretary encourages local educational agencies (LEAs), to the extent possible, to provide Federal funds directly to those schools, rather than providing personnel, materials, or equipment.

Programs That May Be Included

Except as provided below and consistent with this notice and section 1114 of Title I, the Secretary authorizes a schoolwide program school to use funds or services that the school receives from any Federal education program administered by the Secretary to upgrade its entire educational program. This authority does not apply to funds from the following types of programs:

- Formula or discretionary grant programs under the Individuals with Disabilities Education Act (excluded by section 1114(a)(4)(A) of Title I) and funds provided for eligible children with disabilities under section 8003(d) of the ESEA.
- Funds provided under the Schools Facilities Infrastructure Improvement

Act to ensure the health and safety of students through the repair, renovation, alteration, and construction of school facilities.

- Programs under Subpart 1 of Part D of Title I, ESEA, to State agencies for services to children in State institutions for neglected or delinquent children, unless funds are used for transition services involving a schoolwide program school.

- Programs under the Adult Education Act or Subpart 3 of Part A of Title IX of the ESEA (adult Indians), unless adult literacy services are integrated within a schoolwide program plan. Adult education funds could be included, for example, if they provide adult literacy as part of a family literacy activity under a schoolwide program plan.

- Funds awarded to institutions of higher education, unless those funds support elementary or secondary schools (e.g., the School, College, and University Partnerships program).

- Programs that are not administered by the Secretary, such as the National School Lunch Program and Head Start.

In addition, the authority to use funds under other programs in schoolwide program schools does not apply to funds that are allocated by formula to nonschoolwide program schools in an LEA. This is not an authority to redistribute funds among schools. Any redistribution of funds would have to be consistent with the authorizing statute.

Satisfying "Intent and Purposes"

In general, a school that combines funds from other Federal education programs in a schoolwide program is not required to meet the statutory or regulatory requirements of those programs. Combining funds to meet the collective needs of the included programs allows schools to address needs in an integrated way and frees schools from documenting that a specific program dollar was spent only for a specific program activity. However, the school must meet the intent and purposes of the included programs to ensure that the needs of the intended beneficiaries of those programs are addressed by the school. In so doing, the school must be able to demonstrate that its schoolwide program contains sufficient activities to reasonably address those needs and thus meet the intent and purposes of each included program. However, the school need not document that it used funds from a particular program to meet the specific intent and purposes of that particular program.

The following examples illustrate how a schoolwide program could meet

the intent and purposes of specific Federal education programs:

- A secondary school may use funds received under the Carl D. Perkins Vocational and Applied Technology Education Act to support its schoolwide program if its program improves vocational education in the school, for example, by integrating academic and vocational education, and its program improves access to vocational education for special populations in the school.

- A schoolwide program school may use funds received under the Dwight D. Eisenhower Professional Development program provided the school has a sustained and intensive high-quality professional development program for school staff in core academic subjects that is aligned with the State's content and performance standards, reflects recent research on teaching and learning, and incorporates methods and practices to meet the educational needs of diverse student populations.

- A schoolwide program school may use funds received under Subpart 1 of Part A of the Safe and Drug-Free Schools and Communities program provided the school has a comprehensive drug and violence prevention program designed for all students and employees to create a disciplined environment conducive to learning, prevent violence and promote school safety, prevent the use, possession, and distribution of tobacco, alcohol, and illegal drugs by students, and prevent the illegal use, possession, and distribution of those substances by employees.

- A school may use funds received under Subpart 1 of the Bilingual Education Act to support its schoolwide program provided the program implements a bilingual education or special alternative instruction program that reforms, restructures, and upgrades the programs and operations that serve limited-English proficient children and youth in the school.

- A secondary school may use funds received under the School-to-Work Opportunities Act to support its schoolwide program provided the program integrates school-based and work-based learning, establishes effective linkages between secondary and postsecondary education, and is part of a comprehensive State model school-to-work opportunities system that provides for the early selection of career majors and the awarding of skill certificates.

The Department will provide examples from schoolwide schools when they become available.

Requirements With Which a Schoolwide Program School Must Comply

Even though a schoolwide program school combines funds from other Federal programs in its schoolwide program and is thus freed from most statutory and regulatory requirements of those programs, the school and its LEA, as appropriate, must still comply with requirements applicable to those programs relating to—

- Health and safety requirements.
- Civil rights requirements. These requirements include Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and Title II of the Americans with Disabilities Act of 1990. In addition, if a schoolwide program school receives Magnet Schools Assistance funds, to eliminate, reduce, or prevent minority group isolation, the school must continue to operate under its desegregation plan.

- Gender equity requirements.
- Participation and involvement of parents and students. A schoolwide program school must implement extensive parent involvement requirements under Part A that would likely satisfy most, if not all, parent involvement requirements in other Federal education programs.

- Private school children, teachers, and other educational personnel. In other words, applicable requirements concerning the equitable participation of eligible private school children, teachers, and other educational personnel under other Federal education programs must be met even though funds from those programs are combined in schoolwide program schools.

- Maintenance of effort. For programs covered under the maintenance of effort requirements in section 14501 of the ESEA, those requirements would be met through participation in Part A.

- Comparability of services. For example, a secondary schoolwide program school within an LEA that receives funds under the Carl D. Perkins State Vocational and Applied Technology Education Program must be provided services from State and local funds that, taken as a whole, are at least comparable to the services being provided in other secondary schools or sites within the same LEA that are not being served with Perkins funds.

- Use of Federal funds to supplement, not supplant non-Federal funds. In other words, a schoolwide program school must receive at least the same amount of State and local funds that, in

the aggregate, it would have received in the absence of the schoolwide program, including funds needed to provide services that are required by law for children with disabilities and children with limited-English proficiency. The school, however, does not have to demonstrate that the specific services provided with those funds are supplemental to services that would have been provided in that school in the absence of the schoolwide program.

- Distribution of funds to State educational agencies (SEAs) and LEAs. In addition, a school must comply with the following requirements if it combines funds from these programs in its schoolwide program:

- Consistent with section 1306(b)(3) of Title I and § 200.8(c)(3)(ii)(B)(1) of the proposed Title I regulations, a schoolwide program school that combines funds received under Part C of Title I, ESEA, for the education of migratory children must, in consultation with parents of migratory children or organizations representing those parents, first address the identified needs of migratory children that result from the effects of their migratory lifestyle or are needed to permit those children to participate effectively in school and document that services to address those needs have been provided.

- Consistent with section 9115(c) of the ESEA and § 200.8(c)(3)(ii)(B)(2) of the Title I regulations, a schoolwide program school may combine funds received under Subpart 1 of Part A of Title IX of the ESEA regarding Indian education if the parent committee established by the LEA under section 9114(c)(4) of the ESEA approves the inclusion of those funds.

Cross-cutting Federal Requirements

There are requirements contained in the General Education Provisions Act and in the Education Department General Administrative Regulations that apply generally to Department of Education grants, including Title I. To the extent that these requirements affect activities in schools, they would also apply to a schoolwide program school by virtue of its participation in Title I. The consolidation of Department

programs in a schoolwide program, however, would not add to these requirements or require that they be applied separately on a program-by-program basis.

Discretionary Grant Funds

In general, a schoolwide program school may combine funds it receives from discretionary (competitive) grants as well as from formula grants. If a schoolwide program school combines funds from discretionary grant programs, the school must still carry out the activities described in the application under which the funds were awarded. For example, if a schoolwide program is based in a school receiving Federal funds under the Magnet Schools Assistance program, the school must implement activities described in its plan to eliminate, reduce, or prevent minority group isolation. However, a schoolwide program school would not need to account separately for specific expenditures of the combined Federal funds. Although not required, the applicant LEA or school preferably should indicate in its application for discretionary funds that some or all of the funds would be used to support a schoolwide program and describe its activities accordingly. Moreover, if authorized by the program statute, the Department or an SEA could include in its selection criteria for a particular program extra points for conducting activities in a schoolwide program school. For example, an SEA could include such points when awarding subgrants under the Even Start Family Literacy program, which requires an SEA to give priority to applicants that target services to families in need of family literacy services residing in areas with high levels of poverty, illiteracy, or other such need-related factors, including projects that serve a high percentage of children to be served who reside in participating areas under Part A.

Limitations

The authority in this notice does not apply to nonschoolwide program schools that participate in Title I. Those schools must comply with all statutory and regulatory requirements that apply

to funds or benefits they receive. This authority also does not relieve an LEA from complying with all requirements that do not affect the operation of a schoolwide program. For example, to the extent an LEA is required under the Stewart B. McKinney Homeless Assistance Act to designate a homeless liaison to ensure, among other things, that homeless children and youth enroll and succeed in school, the LEA would not be relieved of this requirement by virtue of operating one or more schoolwide programs.

Guidance and Technical Assistance

The Secretary intends to issue additional guidance on schoolwide programs in the near future. In addition, staff in the office of Compensatory Education Programs, in conjunction with staff in the other affected Federal program offices, are available to assist LEAs and schools operating schoolwide programs to implement the authority contained in this notice. If LEAs or schools have specific questions, they should contact Mary Jean LeTendre, Director, Compensatory Education Programs, as provided at the beginning of this notice.

National Assessment of Schoolwide Programs

The Department is directed by section 1501 of Title I to examine, in a national assessment of Title I programs, how well schools are providing participating children an enriched and accelerated educational program through schoolwide programs and how schoolwide programs are meeting the needs of children from migratory families. In this assessment, the Department will examine how the authority contained in this notice has been implemented.

Dated: September 15, 1995.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.010, Improving Programs Operated by Local Educational Agencies) [FR Doc. 95-23471 Filed 9-20-95; 8:45 am] BILLING CODE 4000-01-P

TARGETED ASSISTANCE SCHOOLS



TARGETED ASSISTANCE SCHOOLS

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TARGETED

TARGETED ASSISTANCE SCHOOLS

WHAT IS A TARGETED ASSISTANCE SCHOOL?

A targeted assistance school, primarily addressed in **section 1115 of Title I, Part A**, is one that receives Part A funds yet is ineligible or has chosen not to operate a Title I schoolwide program. The term "targeted assistance" signifies that the services are provided to a select group of children--those identified as failing, or most at risk of failing, to meet the State's challenging content and student performance standards--rather than for overall school improvement, as in schoolwide programs. Like schoolwide program schools, the goal of a targeted assistance school is to improve teaching and learning to enable Part A participants to meet the challenging State performance standards that all children are expected to master. To accomplish this goal, a targeted assistance program must be based on effective means for improving achievement of participating children; use effective instructional strategies that give primary consideration to extended-time strategies, provide accelerated, high-quality curricula, and minimize removing children from the regular classroom during regular school hours; coordinate with and support the regular education program; provide instruction by highly-qualified and trained professional staff; and implement strategies to increase parental involvement.

A targeted assistance school differs from a schoolwide program school in several significant respects:

- Part A funds may be used in targeted assistance schools only for programs that provide services to eligible children identified as having the greatest need for special assistance.
- Part A funds must be used for services that supplement, and do not supplant, the services that would be provided, in the absence of the Part A funds, from non-Federal sources.
- Records must be maintained that document that Part A funds are spent on activities and services for only Part A participating students.

UNDERSTANDING TARGETED ASSISTANCE PROGRAMS

WHO IS ELIGIBLE FOR PART A SERVICES?

One of the primary differences between schoolwide program schools and targeted assistance schools is the requirement that the latter may use Title I, Part A funds only for programs that provide services to eligible children identified as having the greatest need for special assistance. Targeted assistance schools, therefore, may not provide services to all children in the school or in particular grades.

In the new Title I, schools play the key role in selecting children to participate in Part A programs. No longer is there a requirement for a districtwide needs assessment in which children are selected on the basis of uniform criteria across the LEA as a whole. Rather, as described below, an LEA establishes multiple, educationally related, objective criteria to determine which children are eligible to participate in Part A. Each targeted assistance school may supplement these criteria and select, from among its eligible children, those who are in greatest need for Part A assistance.

- Children eligible for Part A services must be from the following populations:
 - ◆ Children not older than age 21 who are entitled to a free public education through grade 12.
 - ◆ Children who are not yet at a grade level where the LEA provides free public education, yet are of an age at which they can benefit from an organized instructional program provided in a school or other educational setting.
- Eligible children are children who are failing, or most at risk of failing, to meet the State's challenging student performance standards.
 - ◆ A **targeted assistance school** generally identifies eligible children within the school on the basis of multiple, educationally related, objective criteria established by the LEA and supplemented by the **school**.
 - ◆ Children who are economically disadvantaged, children with disabilities, migrant children, and limited English proficient (LEP) children are eligible for Part A services on the same basis as other children that are selected for services. **Thus, schools are no longer required to demonstrate that the needs of LEP students stem from educational deprivation and not solely from their limited English proficiency. Similarly, schools are no longer required to demonstrate that the needs of children with disabilities stem from educational deprivation and not solely from their disabilities.**
 - ◆ Children from preschool through grade two must be selected solely on the basis of such criteria as teacher judgment, interviews with parents, and developmentally appropriate measures that determine which children are failing, or most at risk of failing, to meet the State's challenging content and student performance standards.

Certain children are considered at risk of failing to meet the State's student performance standards and are thus eligible for Part A services by virtue of their status:

- ◆ Children who participated in a Head Start or Even Start program at any time in the two preceding years.
 - ◆ Children who received services under a program for youth who are neglected, delinquent, or at risk of dropping out under Part D of Title I (or its predecessor authority) at any time in the two preceding years.
 - ◆ Children in a local institution for neglected or delinquent children or attending a community day program.
 - ◆ Homeless children attending any school in the LEA.
- **From the universe of eligible children in a targeted assistance school, the school selects those children who have the greatest need for special assistance to receive Part A services.** Because it is likely that a school will not have sufficient Part A resources to provide services to all eligible children, the school must obviously make some informed choices concerning which children to serve. These choices are difficult because they inevitably result in some children being selected before other children who may also have significant needs. School staff, in consultation with the LEA and based on a review of all the information available about the performance of eligible children, must use their best professional judgment in making these choices. It is not so simple as merely selecting a cut-off score on an assessment measure. School staff will necessarily need to balance the needs of different populations. For example, most schools will likely need to concentrate Part A resources in certain grades or in certain subjects to the exclusion of children in the grades or subjects not being served. Similarly, a school may decide that some children who are homeless have greater needs because, for instance, homeless children may likely face problems of attendance and homework completion due to recurrent moves and, therefore, may be at greater risk of failure than some other children who are not faced with the disruption associated with homelessness. Furthermore, schools and LEAs that focus strongly on family literacy, for example, may add the additional educationally-related criterion of the educational level of parents when selecting those children who are most in need of Part A assistance from the eligible pool of students to be served.

Other target populations, such as children with disabilities and LEP children, present similar choices. Those children are now eligible for Part A services on the same basis as other eligible children. However, they are also entitled to non-Part A services required by law because of their disability or their limited proficiency in English. A school may decide that the non-Part A services those children are receiving are sufficient to enable them to meet the State's challenging standards. However, children with disabilities or limited-English proficiency who are performing more poorly than other Title I-eligible children, even with the benefit of the non-Title I services they receive, may still be among those in greatest need and thus should receive Part A services also.

Q1. May an LEA and school use Part A funds to identify at-risk students?

- A. No. It is the responsibility of the LEA and school to identify at-risk students from State or local sources. Once eligible children are identified, Part A funds may be used to identify those most in need or to identify their specific educational needs.

Q2. May a school provide services to particular children for less than a full school year?

- A. A school may serve students who are in greatest need of assistance for only a particular skill for the period of time it takes the student to master the skill. In other words, if not necessary, a student need not be a participant for an entire school year.

ENSURING HIGH-QUALITY TARGETED ASSISTANCE PROGRAMS

Part A emphasizes the roles of the school, LEA, and SEA to create an environment of improved teaching and learning for all children, particularly those who are furthest from meeting the State's challenging content and performance standards. The key components contained in the Targeted Assistance Schools section of Title I, Part A reflect the focus of teaching and learning--coordinating students' educational programs and employing effective strategies for improving student achievement.

SCHOOL-LEVEL DECISIONMAKING

One of Title I's most significant changes brings Part A program decisions to the school level. **Schools, in consultation with their districts, determine the uses of funds that best meet the needs of their students.** The new Title I, Part A distributes funds to schools based on the number of children from low-income families in the school or school attendance area. The school then selects the children to serve, based on those who are most in need of service in the school and on the amount of funds available.

Each Title I targeted assistance school must work with its district to determine how to use its Part A funds in ways that make the most sense for its students. Bringing these decisions to the school level will transform Part A from a district-directed "one-size-fits-all" program to a significant resource for schools to use to meet the needs of their most at-risk students. For example, a school can take into consideration times that students participate in other activities and design a Part A program that optimally allows the students to participate in the regular program of instruction. Although LEAs establish general student eligibility criteria, the fact that schools may add school-level criteria and select those children in greatest need will ultimately result in varied Part A services from school to school. However, each of an LEA's twenty schools might add a set of supplemental, multiple, educationally-related objective criteria to select students in the school. Given that each of these schools could have different selection criteria, it is likely that many Title I schools in the LEA will offer

different Part A services. For example, one school might offer reading services to the primary grades, another might offer reading to all grades and math in grades 4 through 6, while another might focus on reading along with an intensive professional development component.

ESSENTIAL COMPONENTS OF TARGETED ASSISTANCE PROGRAMS

Title I has a clear goal--enabling participating children to achieve to challenging State content and performance standards. To meet this goal, **section 1115(c)** requires that each targeted assistance program include certain components that research suggests are essential to any high-functioning program.

Under Section 1115(c), a targeted assistance program includes the following 8 components. It must--

1. Use Part A resources to **help participating children meet the State's student performance standards expected for all children.**

In order to do this, programs must:

2. Be based on **effective means for improving achievement** of children.
3. Ensure that **planning** for participating students is incorporated into existing school planning.
4. Use **effective instructional strategies** that--
 - ◆ Give primary consideration to providing extended learning time such as an extended school year, before- and after-school, and summer programs and opportunities.
 - ◆ Help provide an accelerated, high-quality curriculum.
 - ◆ Minimize removing children from the regular classroom during regular school hours for Part A instruction.
5. **Coordinate with and support the regular education program**, which may include--
 - ◆ Counseling, mentoring, and other pupil services.
 - ◆ College and career awareness and preparation.
 - ◆ Services to prepare students for the transition from school to work.
 - ◆ Services to assist preschool children's transition to elementary school.
6. Provide instruction by **highly qualified staff.**
7. Provide **professional development** opportunities with Part A resources, and other resources, to the extent feasible, for administrators, teachers, and other school staff who work with participating children.
8. Provide strategies to increase **parental involvement**, such as family literacy services.

Q3. Does Title I define "highly qualified staff?"

- A. The Title I statute does not define "highly qualified staff." Nor does Title I require special certifications or degrees (with the exception of provisions related to instructional aides) for staff paid from Part A funds. The law's intent is for Part A participants to receive assistance from staff who have the knowledge and teaching skills that will enable participants to meet the challenging content and student performance standards that States set for all their students.

Each targeted assistance school must assist Part A participants in meeting the State's proficient and advanced levels of performance by--

- Coordinating Part A resources with other resources.

AND

- Reviewing, on an ongoing basis, the progress of participants and revising the targeted assistance program, if necessary, to provide additional assistance to enable them to meet the State's challenging student performance standards.

SERVING LIMITED ENGLISH PROFICIENT STUDENTS AND STUDENTS WITH DISABILITIES

Children with disabilities and LEP children are eligible for Part A services on the same basis as other children who are selected for services. However, they are also entitled to services required by law because of their disability or their limited proficiency in English. To avoid supplanting, a targeted assistance school may not use Part A funds to provide the level of services necessary to meet Federal, State, or local law requirements for limited-English-proficient children or children with disabilities. Part A funds may be used, however, to coordinate and supplement these services as well as to provide additional direct services to these children. In particular, there is no prohibition from providing Title I services in the same subject area in which a child is receiving special education services or services to address limited-English proficiency. For example, a special education student being provided with special education services in reading that are sufficient to meet the requirements of Part B of the Individuals with Disabilities Education Act (IDEA) may also be provided Part A services in reading if the school identifies the student as being in greatest need of assistance for meeting the State's challenging content and student performance standards. The non-Part A services alone, however, must be sufficient to meet the requirements of Part B of IDEA.

EXAMPLES OF TITLE I-FUNDED SERVICES FOR LEP STUDENTS:

- Title I funds are used to pay the salaries of instructional staff who work with those students having academic difficulties, including LEP students, as well as for native language instructional materials where the district's selected alternative language program only requires use of the English language as a means of instruction. Such staff includes additional ESL/bilingual teachers above and beyond what is paid for with Title VII funds and funds from comparable state programs, as well as other staff who work closely with the ESL bilingual teachers and regular classroom teachers.
 - An LEA has a Title I-funded accelerated before- and after-school program for LEP students. One part of the program pairs high school and elementary school students for activities such as shared reading and writing time. Guided reading, math, and science activities and reinforcement of content concepts studied during the day are also an integral part of these sessions.
 - An LEA uses Title I funds for an accelerated summer academic program for LEP students to build upon the skills that are developed during the school year in literacy and content mastery. One part of the program groups Title I-eligible LEP students by grade level and teams them with English-proficient Title I students. This gives the LEP students greater opportunity for English language usage. The content-based language instruction program is taught by a team of teachers--pairing a bilingual and non-bilingual staff member in each class. A variety of activities, such as field trips, are an integral part of the instructional program and provide opportunities to enrich language experiences.
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EXAMPLES OF TITLE I-FUNDED SERVICES FOR DISABLED STUDENTS:

- A teacher provides supplemental instructional assistance to disabled Title I students during their mainstreamed instructional activities. For example, for a disabled student who has been determined to be at-risk in language arts, the teacher provides assistance during the time the student is mainstreamed into language arts activities. This in-class teacher works with all children in the language arts class who are eligible and have been selected to receive Title I services. In this manner, there is maximum coordination with the regular classroom teacher since services are provided in the regular classroom and the disabled students are not segregated from non-disabled students when Title I services are provided.
 - A special education teacher is multiple-funded by special education funds and Title I funds in order to teach disabled students for a portion of the day and Title I students for a portion of the day. In the portion of the day during which the teacher works with Title I students, the teacher works with some of the disabled students who are eligible and have been selected to receive Title I services. In this manner, there is automatic coordination for those students in special education and Title I since the same teacher provides both services. This teacher also spends significant time with the regular teacher coordinating Title I and regular services for the non-disabled Title I students.
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SERVING MIGRANT CHILDREN

Migrant children are eligible for Part A services on the same basis as other children who are selected to receive services. However, when migrant children arrive at a school during the school year, they may often be unable to receive Part A services because the school has already allocated all its Part A funds. Because LEAs that currently receive migratory children normally do so on a regular basis, LEAs should plan for their arrival and consider their needs when planning, or helping schools to plan, Part A services. Adequate funds should be reserved so that migrant children, who are otherwise eligible for Part A services, receive services even if they arrive in the LEA well into the school year and remain for a limited period of time.

In meeting the needs of migrant children, States, LEAs, and targeted assistance schools have the flexibility under section 1306(b) of Title I, Part C to use Migrant Education Program (MEP) funds interchangeably with Part A funds. This flexibility can be exercised, however, only after MEP funds are first used to meet the identified needs of migrant students that--

- ◆ Result from the effects of their migrant lifestyle, or are needed to allow

migrant students to participate effectively in school.

AND

- ◆ Are not addressed by services provided under other programs, including programs under Title I, Part A.

If MEP funds remain after these unique needs have been met, the MEP funds may be used interchangeably with Part A funds to provide services that are determined to be necessary for the migrant children who are eligible under Part A. Section 1306 does not create a statutory priority to serve migrant children eligible for services under Part A ahead of other Part A-eligible children. Rather, section 1112(b)(8) of Part A makes clear that migrant children eligible for Part A services must be selected on the same basis as other children who are eligible to receive Part A services.

SERVING STUDENTS WHO PARTICIPATE IN EDUCATIONAL CHOICE PROGRAMS

Some States have implemented interdistrict open-enrollment options. A student who attends a school in a non-resident LEA through a State open enrollment or other educational choice program could be eligible for Title I services in the non-resident LEA under the circumstances provided below.

- (1) In creating an open enrollment or other educational choice program, the State, pursuant to State law, treats students participating in the program as "residents" of the LEA in which they attend school. Accordingly, section 1113 of the Title I statute would apply to the new "resident" LEA--i.e., the LEA of choice. In such a case, a student attending a school in a participating attendance area of a new resident LEA and meeting the student selection eligibility criteria would be eligible for Part A services. In effect, the LEA in which the school of choice is located would become responsible for providing Part A services to the student because of the State's declaration of residence.
- (2) Section 1113(a)(6) of Title I relieves an LEA from identifying and selecting eligible attendance areas if an LEA has fewer than 1,000 children enrolled. In this situation, the LEA may serve any student who, because of participation in an open enrollment or other educational choice program, attends a school in that LEA. The student of course must be identified as eligible and selected to participate in accordance with the LEA and school selection criteria.
- (3) A student resides in a Title I, Part A program area but chooses, under an open enrollment or other educational choice program, to attend a school in a participating attendance area in another LEA. The student may receive Part A services in the non-resident LEA if the student has been identified as eligible and selected to participate

in accordance with the non-resident LEA and school selection criteria.

- (4) Section 1113(b)(1)(B) of Title I allows funds to be used for eligible children who are in a school that is not located in an eligible Title I school attendance area when the proportion of children from low-income families in that school is equal to the proportion of such children in an eligible school attendance area of that LEA. If students from low-income families attend a school in a non-resident LEA under an open enrollment or other educational choice program, they may be counted to determine whether the school qualifies under section 1113(b). If the school qualifies and the educational choice participants meet the LEA and school criteria for selection, they may be served in that school.

INSTRUCTIONAL STRATEGIES AND MODELS

Instructional strategies and models in a targeted assistance school must focus on enabling participating students to meet the State's student performance standards. The selection of instructional models to use in a targeted assistance school will be made by each school based on the needs of participating students. Although extended time strategies are strongly encouraged, other strategies such as in-class models and collaborative teaching among Part A and regular classroom teachers can also benefit participating children. Given that the students who will be participating in targeted assistance programs are those who are failing, or most at risk of failing, to meet the challenging standards, thoughtful consideration to program design is essential.

Extended Time

EXAMPLE: Extended time

An urban school district in a western State operates a child development center that offers three programs:

- Before- and after-school extended-day programming for K-3 students.
- A full-day preschool program.
- A prekindergarten program for three hours a day.

The center is open 10 hours a day, Monday through Friday, and provides services during the summer, on holidays, and on teacher in-service days. Most students who participate before and/or after school also participate in the summer program. The center focuses on developmentally appropriate activities, language arts, and multicultural activities with the goal of preparing Title I participants from non-English-speaking homes for success and full participation in American society.

EXAMPLE: EXTENDED TIME
Beaverton, Oregon

Summer time has been identified as an opportunity in this school district to provide additional services to children who attend private schools during the regular school year. More than 50 Title I-eligible students from nonpublic elementary schools enroll each summer in a four- to five-week reading program. Thematic studies provide a framework for reading and writing activities that improve student attitudes and achievement and encourage parent participation in education. The summer school targets students in grades 1-8 who have difficulty reading. The program's goals are to stimulate higher-order thinking skills, overall reading competence and social skills and to engage parents in supporting student learning. Classes meet for three-and-a-half hours a day, four days a week in the same building used by the district-sponsored summer school for special education students. Students use laptop computers to learn word processing and write reports and they are allowed to take the computers home for additional instruction.

EXAMPLE: EXTENDED TIME
Omaha, Nebraska

The Omaha Public Schools and the Omaha Housing Authority have joined forces to provide additional time for students to receive help. The partnership has established study centers at four public housing developments where volunteers provide individualized tutoring to students twice a week after school. The centers are open from 4:30 p.m. to 7 p.m. twice a week. On any typical day, between 30 to 40 students attend each of the four study centers to receive individualized help. Approximately 60 percent of the students attend elementary school, 25 percent attend middle school and 15 percent attend high school.

EXAMPLE: YEAR-ROUND SERVICES
Socorro Independent School District, El Paso, Texas

Socorro Independent School District began phasing in year-round education with intersession programs to improve academic achievement and better serve the needs of its students. Every school follows a schedule of 60 weekdays on, 20 weekdays off. Intersession activities occur during the first two weeks of each month-long break. Intersession formats vary but most have acceleration and enrichment activities from 8 a.m. to noon, followed by extracurricular activities in the afternoon. Academic programs focus on tutoring and enrichment activities that use thematic whole-language approaches. The shorter breaks between courses decrease the loss of English skills by many students with limited English proficiency. Participation in the intersessions is voluntary but students who have failed or fallen behind are encouraged to attend. Most schools follow multi-track schedules to serve larger number of students.

EXAMPLE: EXTENDED TIME - SUMMER

Wanting its Title I participants to participate in all regular school day activities and acknowledging its students' vocational interests, a high school designed its targeted assistance program to use its Title I funds and other supplemental funds to increase the opportunities for Title I students to engage in summer apprenticeships. Teaching and counseling staff provide academic and social support to students placed in positions requiring the application of language and mathematics skills. Most placements are in technical and professional support areas in order to help students translate academic skills to the job setting and provide a foundation for teacher/counselor support. Summer support emphasizes developing goal structures that help students master the various academic and job functions. When allowable, students earn credit towards graduation for completion of program components.

EXAMPLE: EXTENDED TIME - SUMMER
South Bend, Indiana

Increasing the opportunities to learn for at-risk students has made the schools in this urban district look towards the summer for additional instruction time. The district has instituted a five-week summer program that uses a theme-based, interdisciplinary curriculum to help more than 500 students in grades preK-10 succeed in the regular school environment. The summer program targets students who are migrant or non-native English speakers and emphasizes geography, science, the arts, media, and technology. The goals of the summer school include improving basic skills and English language proficiency, expanding awareness of career and cultural opportunities and boosting students' self esteem. Students meet for seven-and-a-half hours a day, Monday through Friday, and spend mornings on academic activities and afternoons in extracurricular activities such as dance or art.

EXAMPLE: EXTENDED TIME - SUMMER
Charleston, South Carolina

The schools in Charleston have used the summer to provide additional learning time for at-risk students. Charleston's six-week, science-based summer enhancement program helps students in grades K-5 maintain and improve their skills in reading, writing, and mathematics. The program targets at risk, Title I students who pass their classes but would benefit from the program. The program has two goals: (1) to maintain and improve students' basic skills through experiential learning activities in science-based thematic units, and (2) to improve student attitudes toward school and learning. The program meets for four hours a day, Monday through Friday, for six weeks. Everyday, participants attend classes organized around science themes, work in the school's computer lab, check out books and read in the media center, and spend time writing in their journals.

EXAMPLE: EXTENDED TIME/TECHNOLOGY

An elementary school found that traditional instructional methods were not successful in helping Title I participants in learning math and science. After a small team of Title I and other teachers reviewed many options and discussed them with the entire school staff and LEA administrators, the school decided to use the Internet and a satellite link to communicate via computer and also "in person" with experts at a weather station. The school designed the program for Title I participants as an exciting way to teach math and science concepts. During some lunch times and also after school, students and teachers communicate on a daily basis through technology with oceanic and atmospheric experts. All communication is coordinated with extensive lesson planning by the teachers and experts.

In-class Resource Models

Over the last few years, many LEAs and schools have moved from the pull-out approach (pulling students from the regular classroom for short periods every day or so) to providing resource teachers or other resources in the regular classroom. The in-class support that has been most effective does not resemble a pull-out in the back of the classroom.

EXAMPLE: In-class

The Creative Useful Experiential (Project CUE) instructional model is used in Coloma Community Schools (MI) to integrate special education and Title I students into the regular classroom setting by: (a) utilizing the thematic approach to make the curriculum more interesting to students, (b) using of teacher collaboration to ensure the needs of all children are being addressed, and (c) using of a variety of experience-based classroom activities. Teacher teams collaborate to plan a theme-based curriculum for each classroom. A teaching team is made up of a regular education, a special education, and a Title I teacher. Specialist teachers are scheduled into 4 or 5 classes a day to ensure that the needs of the special education and Title I students are met. Cooperative planning between all team members allows for activities designed to address the needs of a wide range of students. Activities that incorporate a variety of learning styles allow students to perform successfully. The inservice required for the implementation of this program includes training in cooperative learning, strategic instruction, co-teaching, literature-based learning, thematic instruction, hands-on activities, consensus decision-making, outcome-based curriculum, portfolio/classroom assessments, and classroom observation of model teaching.

EXAMPLE: In-class**"Push-In" As A Delivery Model**

Eliminating the traditional "pullout" program, an urban school district in Arizona with a diverse student population instituted a "push-in" delivery of additional services for Title I students. Under the supervision of the regular classroom teacher, a Title I teacher or paraprofessional works with small groups of children, some of whom, at times, may be non-Title I. This structure minimizes disruption and negative labeling while it provides direct services to Title I students and incidental assistance to their classmates who might need assistance on a particular concept.

In each Title I school, a Title I program facilitator (a certified teacher and in many cases a former Title I teacher) provides every classroom teacher with pedagogic support, including modeling instructional strategies and other professional advice, support, and guidance. Their goal is to help every teacher establish and maintain classroom learning conditions that stimulate and accelerate Title I students' learning.

Pull-out and Replacement Programs

Part A requires that targeted assistance programs use effective teaching strategies that give primary consideration to providing extended learning time and that help provide an accelerated, high-quality curriculum. Because there are situations in which a school is unable to provide extended-time services or in which schools have had success by conducting replacement projects with students, pull-out and replacement models are other allowable strategies.

EXAMPLE: Pull-out/Reading Recovery

Many schools throughout the country have implemented Reading Recovery, an early intervention program that enables the lowest 20 percent of first graders "at risk" of reading failure to develop effective strategies to read at average classroom levels. Children are selected through a battery of individually administered diagnostic tests. They receive a daily 30-minute lesson that incorporates a variety of reading and writing experiences designed to help them develop effective strategies for reading and writing. Each day, children move through a lesson sequence that involves the reading of familiar materials, the composing and writing of a story, and the introduction and reading of a new book. Although Reading Recovery lessons follow a framework, every lesson is unique because the Reading Recovery teacher closely monitors each student's progress and makes ongoing teaching decisions based on that student's current use of reading and writing strategies. This pull-out program lasts approximately 15-20 weeks and supplements regular classroom reading instruction. Once children complete the Reading Recovery program, they often need no further remediation in reading.

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- Q4. Are replacement programs allowable under Part A as they were in previous authorization periods?**
- A.** A replacement program provides Part A services for a period of time that exceeds 25 percent of the time--computed on a per day, per month, or per year basis--that a participating child would, in the absence of Part A funds, spend receiving instructional services from a teacher of a required or elective subject who is paid with other than Part A funds. Part A replacement programs are generally provided in a different classroom setting or at a different time than would be the case if these children were not participating in the Part A program and replace all or part of the course of instruction regularly provided to Part A participants with a program that is designed to meet participants' special educational needs. Replacement programs are still allowable under Title I. However, the statute strongly encourages strategies that include extended learning time and accelerated curricula. If an LEA operates a

replacement program, the LEA must provide from funds other than Part A either the FTE number of staff that would have been provided for the services replaced by the Part A program or the funds required to provide the number of staff.

Incidental Inclusion

Because of the instructional method, setting, or time of a particular Part A service, it is not always reasonable or desirable for a school to serve only children who have been selected to participate in a Part A program. This may be particularly true if a school is providing Part A services in the regular classroom. A school may provide, on an incidental basis, Part A services to children who have not been selected to participate in the Part A program. This would be allowable only if the Part A program--

- Is designed to meet the special educational needs of the children who are failing, or most at risk of failing, to meet the State's challenging student performance standards and is focused on those children; and
- The inclusion of non-Title I, Part A children does not--
 - ◆ Decrease the amount, duration, or quality of Part A services for Part A children;
 - ◆ Increase the cost of providing the services; or
 - ◆ Result in the exclusion of children who would otherwise receive Part A services.

COMPREHENSIVE SERVICES

If health, nutrition, and other social services are not otherwise available to participating children in a targeted assistance school, and the school, if appropriate, has conducted a comprehensive needs assessment and established a collaborative partnership with local service providers, and if funds are not reasonably available from other public or private sources, then a portion of Part A funds may be used to provide these services, including--

- ◆ Provision of basic medical equipment, such as eyeglasses and hearing aids.
- ◆ Compensation of a coordinator.
- ◆ Professional development necessary to assist teachers, pupil services personnel, other staff, and parents in identifying and meeting the comprehensive needs of eligible children.

ASSIGNMENT OF PERSONNEL

To promote the integration of Part A staff and participants into the regular school program and overall school planning and improvement efforts, Part A-paid personnel may--

- Assume limited duties that are assigned to similar personnel paid with other funds, including duties beyond classroom instruction or that do not benefit Part A participants, as long as the amount of time spent on the limited duties is the same proportion of total work time as that for similar personnel at the same school.
- Participate in general professional development and school planning activities.
- Collaboratively teach with regular classroom teachers if the collaborative teaching directly benefits participating children.

The purpose of this provision is to involve Part a staff in shared responsibilities to promote a coherent and well-coordinated program for participants. The provision is not meant to result in Part A staff being assigned a disproportionate share of special duties at a school. In assigning Part A staff to such duties, a school and LEA should ensure that the Part A program is not harmed.

SERVING PRESCHOOL CHILDREN



SERVING PRESCHOOL CHILDREN

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PRESCHOOL

SERVING PRESCHOOL CHILDREN

Title I, Part A funds may be used to eligible preschool children. To be eligible, preschool children--like school-aged children--must be failing, or most at risk of failing, to meet the State's challenging student performance standards. Preschool children from must be selected for Part A services solely on the basis of such criteria as teacher judgment, interviews with parents, and developmentally appropriate measures. Children who participated in a Head Start or Even Start program at any time in the two preceding years are automatically eligible for Part A services. [See the Targeted Assistance Schools chapter for further discussion on student eligibility and selection.]

There are several ways in which preschool programs may be funded under Part A. For example--

- A participating school may use its Part A funds to operate a preschool program.
- An LEA may reserve an amount from the LEA's total allocation to operate a Part A preschool program for eligible children in the district as a whole or for a portion of the district.
- An LEA may reserve an amount from the LEA's total allocation and distribute those funds to specific Title I schools to operate Part A preschool programs.

Q. May an LEA and school use Title I funds to identify eligible preschool students?

A. Generally, it is the responsibility of an LEA and school to use information it already has available to identify at-risk students. However, if an LEA has no existing assessment data for preschool children, Part A may pay for identifying these children.

Section 1112(c)(1)(H) of Title I requires that, beginning in the 1997-98 school year, Part A preschool programs must comply with performance standards established under the Head Start Act. The specific standards applicable to Part A preschool programs are in 45 CFR 1304.21--Education and Early Childhood. **[NOTE: Proposed Head Start Performance Standards were published in the Federal Register on April 22, 1996]**

Part A preschool programs using the Even Start model or Even Start programs which are expanded through the use of Title I, Part A funds are not required to comply with the Head Start performance standards. Even when a Part A preschool program meets the Head Start standards, an LEA or school has the option to operate the preschool program using the Even Start model.

COORDINATION WITH OTHER PRESCHOOL PROGRAMS

Title I contains new links and opportunities between Part A and other preschool programs, most notably, Head Start and Even Start. If an LEA submits a Part A plan under section 1112 of Title I (rather than a consolidated plan), the LEA must describe in its plan how it will coordinate and integrate services under Part A with other educational services such as Even Start, Head Start, and other preschool programs, including plans for the transition of children in those programs to elementary school programs. An LEA must also describe, if appropriate, how it will use Part A funds to support preschool programs for children, particularly children participating in a Head Start or Even Start program. An LEA may provide such services directly or through a local Head Start agency, an agency operating an Even Start program, or another comparable public early childhood development program. At the school level, an elementary schoolwide program school must include in its plan strategies for assisting preschool children in the transition from early childhood programs, such as Head Start, Even Start, or a State-run preschool program to elementary school.

Head Start

In addition to preschool children participating in Part A programs, Part A funds may also be used to complement or extend Head Start programs. In the examples listed below, all Part A requirements apply to the use of Part A funds.

- ◆ Eligibility for Head Start is based on the income levels of parents. Children eligible for Part A might not qualify for Head Start under Head Start's income requirement. Part A funds may be used to provide services to Part A-eligible children who are not eligible for Head Start services.
- ◆ Head Start may be unable to serve all its eligible students. Part A funds may be used to serve unserved children who are also eligible for Part A (i.e., those who reside in eligible Title I attendance areas and are failing, or most at risk of failing, to meet the State's challenging student performance standards). (Note that some Head Start-eligible children might not be eligible for Part A.)
- ◆ Part A may be used to provide additional services to Head Start children who are also eligible for Part A services. This may include extending the program for additional time or increasing the number of days, providing services at times Head Start is not operating, or enriching services through provision of extra personnel to work with Part A-eligible children.
- ◆ Part A funds may provide educational services for children who are eligible for both Part A and Head Start, with Head Start funds providing supporting services.

Even Start

A Part A preschool program using an Even Start model must integrate early childhood education, adult literacy or adult basic education, and parenting education into a unified family literacy program. Additionally, the Part A preschool programs must include program elements 1 through 9 in section 1205 of Title I, Part B (Even Start Family Literacy Program).

Although funds for Part A and Even Start are not interchangeable, SEAs and LEAs have considerable flexibility in coordinating the two programs. For example, an LEA may include appropriate Part A activities as part of its Even Start project. A Part A preschool program could provide, in full or part, the early childhood component of an Even Start project. Similarly, Part A services that provide training for parents of Part A participants to help them assist in their children's education could also be included in an Even Start project. Such coordination is enhanced by several provisions in the new law: Part A funds may be used to increase parent involvement, *including family literacy*; and Part A funds or in-kind contributions may be used to meet the local share requirement under Even Start.

If an LEA includes Part A activities as part of its Even Start project, it must ensure that the Part A activities are consistent with the requirements of Part A as well as Even Start. There are a few notable differences. Specifically, children participating under Part A must reside in a participating school attendance area (unless the LEA has designated the whole LEA as a preschool attendance area). Also, children participating under Part A must be failing, or at risk of failing, to meet the State's student performance standards. Part A children, however, do not have to have parents who are eligible for adult basic education under the Adult Education Act.

Part A funds may be used to administer a Part A activity that is part of an Even Start project, as in the examples above. Otherwise at the local level, Part A funds may not be used for the administration of Even Start. If a Part A activity is not a part of an Even Start project, it still may be appropriate to have the same personnel administer both programs. In that case, each program must pay its appropriate share.

Preschool Programs for Children with Disabilities

Preschool children with disabilities may participate in a Part A preschool program paid for solely with Part A funds if those children are identified as eligible for Title I, Part A. Preschool children who have been formally identified by the LEA as disabled and entitled to special education services but who have not been identified as eligible for Part A services may participate in a preschool program that is funded by both Part A and special education funds, with the special education program paying its proportionate share for such children. For example, if the relative needs of the Title I and disabled children are similar, and the

preschool class contains six Title I children and four children with disabilities, the program costs would be shared. Part A would pay 60 percent of the costs and special education would pay 40 percent of the costs.

PARENTAL INVOLVEMENT



PARENTAL INVOLVEMENT

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PARENTAL INVOLVEMENT

"Every school will promote partnerships that will increase parental involvement and participation in promoting the social, emotional, and academic growth of children." (Goal 8 - National Education Goals)

INTRODUCTION

When schools work together with families to support learning, children are inclined to succeed not just in school, but throughout life. Three decades of research have shown that parental participation in schooling improves student learning. Such participation of parents and families is critical not only in the very beginning of the educational process, but throughout a child's entire academic career.

Under the Elementary and Secondary Education Act (ESEA), Title I, Part A has been restructured to serve as a means for helping all students to achieve challenging academic standards. To accomplish this objective, the Act promotes the formation of new partnerships, particularly home-school partnerships, to help address more completely the full range of student needs that impact on their learning.

The parental participation provisions in Part A as well as those in the Goals 2000: Educate America Act (Goals 2000) reflect these research findings and emphasize the importance of parental involvement. Part A strengthens and builds on the requirements set forth in its predecessor, Chapter 1, with partnership provisions that are designed to benefit not only students and parents, but schools and communities, as well. Both pieces of legislation recognize the important roles that school, family, and community members play in helping our children to succeed in school, and both provide greater opportunity for these entities to participate directly in school governance and in the design and implementation of State school reform plans. Part A acknowledges the full range of roles that parents can play in their children's education.

Throughout this document, the words "parent" and "family" refer to all of the various configurations of primary caregiving units to which children belong, and are intended to have the broadest possible meaning.

TIPS FROM THE RESEARCH ON PARENTAL INVOLVEMENT

While parental involvement can take many forms, here are some basic tips from research on creating parental involvement programs that work (Rioux and Berla, 1994; Flaxman and Inger, 1991)

- Good family involvement programs do not *always* require new or additional money.
 - All parents and families want the best for their children and can help them succeed.
 - The benefits of parental involvement are not confined to early childhood or the elementary grades; parental involvement provides strong benefits to children through high school.
 - Leaders among parents must be recognized as special, and schools should take care to nurture their continued involvement; schools should continuously nurture new parent leaders.
 - People and organizations will stretch to meet the needs of the program in creative and innovative ways.
 - Children do best when parents are enabled to play four key roles in their children's learning: teachers (helping children at home), supporters (contributing their skills to the school), advocates (helping children receive fair treatment), and decision-makers (participating in joint problem-solving with the school at every level). (Henderson and Berla, 1994)
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THE STATE LEVEL

State Plan

Under section 1111, the State plan describes the high standards and assessments the State will establish or is using for all children, as well as how the State will fulfill its additional responsibilities to enable Part A students to meet these standards. These endeavors are linked to the State's systemic reform efforts, if any, under Goals 2000 or another Statewide process, to ensure that the performance expected of children in Part A schools is the same as that expected for all children, and that Title I, Part A becomes a vehicle for systemic reform. For school districts and schools, the State plan provides a framework for the implementation of the Part A program. It is the point of reference for what all children in the State should learn, and for how to create opportunities for learning to happen.

Parental Participation in State Plan Development

A State plan must be developed in consultation with **parents**, as well as with LEAs, teachers, pupil services personnel, administrators and other staff. This consultation will ensure that parents are involved when States are developing their challenging content and student performance standards.

Although "consultation" is not specifically defined in the statute, effective consultation would--

- ◆ Be broad-based, reaching out to the wide range of parents in the State, including those with limited literacy, limited English proficiency, or disabilities.
- ◆ Be ongoing throughout the process of development and implementation.
- ◆ Cover all the core elements of the State plan--the setting of challenging content and performance standards, including establishment of proficient and advanced levels of proficiency; deciding what constitutes adequate yearly progress sufficient to achieve the goal of all children served meeting the State's proficient and advanced levels; development of a set of high-quality student assessments for all students; the methods by which the State will help each LEA and school develop the capacity to comply with the LEA and school-based requirements of the Act; and the factors deemed appropriate to provide students with an opportunity to achieve the knowledge and skills described in the standards.

Committee of Practitioners

Each State must assure in its State plan that a Committee of Practitioners, which shall include parents, has been established to advise it on carrying out the responsibilities it has for administering the Part A program. The work of this Committee is critical because it must review State Title I policy, rules and regulations and advise the State on these governing principles. Parents on this Committee should be broadly representative of Title I parents in the State. With LEA representatives, administrators, teachers, private school representatives, and others, parents should be involved meaningfully in State plan development and continue to be involved in State implementation of the plan through periodic reviews and consultation on revisions necessary to reflect significant changes in strategy and program.

THE LEA LEVEL

LEA Plan

For a State to approve an LEA's plan, the plan must demonstrate how the LEA will enable Part A schools to substantially help all Part A children meet the State's challenging content and student performance standards that all children are expected to meet. In this regard, the central responsibilities of the LEA to improve teaching and learning are through (1) intensive and sustained professional development; (2) the provision of technical assistance and support to help schools implement their Part A programs and establish effective improvement processes; and (3) the coordination of Part A services with educational, health and social services.

These three major areas all have strong implications for family participation. However, the role of parents and families is referenced specifically in some of the LEA plan requirements, including--

- ◆ A description of any additional high-quality student assessments the LEA will use to provide information to parents, students, and teachers on the progress being made toward meeting the State student performance standards.
- ◆ A description of the LEA's strategy to provide professional development for teachers and, where appropriate, parents, pupil services personnel, administrators, and other staff.
- ◆ A description of how teachers, in consultation with parents, administrators, and pupil services personnel, will identify eligible children most in need in targeted assistance schools.
- ◆ An assurance that the LEA will inform eligible schools and parents of schoolwide program authority.
- ◆ An assurance that the LEA will coordinate and collaborate, to the extent feasible and necessary as determined by the LEA, with other agencies providing services to children, youth, and families, including health and social services.
- ◆ An assurance that the LEA will provide services to eligible children in private schools and hold timely and meaningful consultations with private school officials. Since private schools do not participate in Title I, the LEA as the administrative agent would assume responsibility for carrying out parental involvement requirements with the parents of participating children.

Consequently, "meaningful consultation" should include discussion of ways in which the LEA can involve private school parents in their children's participation in Part A.

The LEA's Part A plan must be jointly developed with the parents of participating children, including parents of participating children in private schools. **Additionally, in accordance with section 1118(b)(4), if an LEA's Part A plan is not satisfactory to the parents of participating children, the LEA must submit any parent comments with the plan when it is submitted to the State.**

LEA Parental Involvement Policy

An LEA must develop jointly with, agree upon with, and distribute to parents of participating children a written parent involvement policy that is incorporated into the LEA's plan.

Section 1118 improves the former parental involvement provisions in two central ways. **First**, it establishes the role of the school in involving parents and clarifies the relationship between the school's role in parental participation and the role of the LEA. This change is in response to research that demonstrates that when schools effectively involve parents, there is a positive impact on student success. **Second**, this section divides the requirements into three components: (1) policy involvement; (2) shared responsibilities for high student performance; and (3) building capacity for involvement. These components recognize the full range of roles that parents can play in their children's education as well as the need for parents and schools to develop a partnership and ongoing dialogue around student achievement.

An LEA's written parent involvement policy sets the expectation and establishes the framework for parental participation in the LEA. It should relate directly to the rest of the Part A program and to district policy in general by reflecting the LEA's philosophy with respect to promoting the achievement of every child. LEA staff, in conjunction with parents, are urged to modify the policy as LEA needs change. **If the LEA already has a district-level policy that applies to all parents, it may amend that policy, if necessary, to meet the Part A parental involvement policy requirements.** An advantage to this would be coordinating the involvement of all parents across any Federal, State, or local programs that the LEA is implementing.

The LEA parental involvement policy must describe how the LEA will do the following specifically enough that parents and school system personnel can readily understand the steps for implementing each requirement:

- ◆ Involve parents in the joint development of its Part A program plan and in the process of school review and improvement.

- ◆ Provide the coordination, technical assistance, and other support necessary to assist participating schools in planning and implementing effective parental involvement.
- ◆ Build the schools' and parents' capacity for strong parental involvement.
- ◆ Coordinate and integrate Part A parental involvement strategies with those of other programs, e.g., Head Start, Even Start, the Parents as Teachers Program, the Home Instruction Program for Preschool Youngsters, and State-run preschool programs.
- ◆ Conduct, with the involvement of parents, an annual evaluation of the content and effectiveness of the parental involvement policy to determine whether there has been increased participation and whether there are barriers to greater participation, particularly by parents who are disabled, who have limited English proficiency, limited literacy, or are of any racial or ethnic minority background.
- ◆ Use the evaluation findings in designing strategies for school improvement and in revising parental involvement policies at the district and school levels.

Evaluation of Effectiveness of LEA Parental Involvement Policy

The statute specifies that an annual evaluation be conducted of the content and effectiveness of the parental involvement policy to determine whether there has been increased participation and whether there are barriers to greater participation by parents who are disabled, have limited English proficiency, have limited literacy, or are of any racial or ethnic minority background. To carry out such an evaluation, the LEA, in conjunction with participating parents, could consider developing methods for--

- (1) comparing levels of parental participation prior to and following implementation of the newly required policy;
- (2) determining whether the levels of participation of parents who are economically disadvantaged, disabled, have limited English proficiency, have limited literacy, or are of any racial or ethnic minority background are represented in adequate proportions;
- (3) identifying barriers to greater participation by these groups;
- (4) assessing the effectiveness of parental participation activities, procedures, and policy in the improvement of schools;

(5) reporting evaluation findings; and

(6) using evaluation findings to revise school-level policy so that it promotes more specifically the improvement of student academic achievement, the social and emotional welfare of students, and the school's teaching and learning environment.

Reservation of Funds

An LEA with an allocation under Subpart 2 of Part A of over \$500,000 is required to spend at least 1 percent of its allocation for LEA- and school-level parental involvement activities, including family literacy training and training to enhance parenting skills. LEAs, of course, have the option to spend a larger amount. Funds that schools spend for parental involvement activities may count toward meeting this requirement. LEAs with allocations of \$500,000 or less are also responsible for implementing parental involvement activities, although no minimum allocation is required, and may reserve amounts necessary from their Part A allocation to conduct these activities. An LEA may reserve funds for parental involvement activities off the top of its allocation, or the LEA may require its Part A schools to carry out sufficient parent involvement activities from their allotments so that the aggregate of funds supporting such activities equals or exceeds the requisite 1 percent.

Parents of participating children are to be involved in decisions regarding how these funds are spent. Involvement in decision-making should take place before any expenditures are made, be on-going, and continue throughout the fiscal year in which an LEA's allocation is made.

To carry out a joint decision-making process, LEA staff along with parent representatives from all participating schools could solicit and collect parent recommendations through surveys, meetings, hotlines, and so on. This input, to be discussed and reviewed prior to decision-making, would be used as the primary basis for the expenditure of funds reserved for parental involvement activities in the district. Such a process would allow the consideration of diverse needs and interests, and the implementation of programs by LEAs that reflect their particular community's diversity. Throughout the year, newsletters, designated bulletin board announcement locations, meetings, exhibits, and various other methods and media could be used for ongoing communication, information exchange, and the solicitation of additional suggestions for the use of funds. It is usually effective to establish an infrastructure, such as a work team or subgroup, that would assume specific responsibility for the process.

EXAMPLE--District #112 Parental Partnership Policy Statement

School District #112 of the Chaska Public Schools in Chaska, Minnesota, adopted the following parental partnership policy. Although it is not Title I-specific, it provides direction and leadership to the district, and makes it clear that parental involvement (of all parents) is a priority.

Rationale

It is the goal of School District #112 to "develop strong partnerships with the home." Parents and schools working as partners increase student achievement and develop positive attitudes about self and school.

The key factor in the home-school partnership is the relationship between the teacher and the parent. Teachers are professionals who manage a variety of instructional resources. Parents are an essential resource in the learning process of their children. Organizational support from the school board, district administrators, and building principals enables teachers to effectively develop the partnership.

The intent of this policy is to result in consciously doing those things already in practice in a more efficient, consistent and effective manner as well as generating new ways of strengthening the partnership.

Policy

The partnership between home and school will be supported by:

1. The development of an infrastructure to continually assess, plan and implement strategies that build the partnership.
 - a. A district-wide committee of parents, teachers, and administrators to guide overall program efforts and serve as a home-school partnership network.
 - b. Coordination of activities through the staff development system in areas of teacher inservice, assessment of teaching strengths, and communication with parents toward creation of the best possible learning experience for each child.

EXAMPLE Cont'd.-Parental Partnership Statement

2. Self-study of parental involvement practices by teams of parents, teachers and the administrator in each school using the following seven basic principles considered essential to home-school partnerships.

- a. Every aspect of the school climate is open, helpful and friendly.
- b. Communications with parents (whether about school policies and programs or about their own children) are frequent, clear and two-way.
- c. Parents are treated as collaborators in the educational process, with a strong complementary role to play in their children's school learning and behavior.
- d. Parents are encouraged, both formally and informally, to comment on school policies and to share in the decision making.
- e. The principal and other school administrators actively express and promote the philosophy of partnership with all families.
- f. The school encourages volunteer participation from parents and the community at large.
- g. The school recognizes its responsibility to forge a partnership with all families in the school, not simply those most easily available.

3. Resources will be provided to principals, teachers and parents by the Parent Partnership Liaison.

School District #112, its School Board, and staff will provide leadership in the development of clear avenues of parental involvement. Full realization of the partnership will be achieved through the on-going commitment and active participation by both home and school.

THE SCHOOL LEVEL

SCHOOL PARENT INVOLVEMENT POLICY

In addition to an LEA parent involvement policy, each Part A participating school must jointly develop with, and distribute to, parents of participating children a written parental involvement policy, agreed upon by these parents, that describes the means for carrying out school-level policy, sharing responsibility for high student performance, building the capacity of school staff and parents for involvement, and increasing accessibility for participation of parents with limited English proficiency or with disabilities. Such policy must be updated periodically to meet the changing needs of parents and the school.

It is important to understand that the involvement of families in their children's education is not limited solely to attendance at PTO meetings or volunteering at school. What parents do at home with their children is even more important to the total educational effort, and schools need to let parents know that they value both their contributions at school and their participation at home.

If a school has a parental involvement policy that applies to all parents, it may amend that policy, if necessary, to meet the Part A parental involvement requirements.

I. Policy Involvement

A school's written policy should describe specifically enough for parents and school system personnel to readily understand how each participating Part A school will do the following:

- ◆ Convene an annual meeting to inform parents of their school's participation in Part A, to explain Part A's requirements, and their right to be involved. In preparation for this meeting, efforts should be made to determine the most convenient time for parents of participating children to attend and to determine the most reliable method for ensuring that parents receive notice.
- ◆ Offer a flexible number of meetings, such as in the morning or evening, and provide, if necessary, with Part A funds transportation, child care, or home visits as these services relate to parental involvement.
- ◆ Involve parents, in an organized, ongoing, and timely way, in the planning, review, and improvement of Part A programs, including the school parental involvement policy and the joint development of the schoolwide program plan, if any. **If a school has in place a process for involving parents in the joint planning and design of its general education programs, the school may use that process as long as there is adequate representation of parents of participating children, and it conforms to, and is effective in implementing, the parental involvement requirements of Part A.**
- ◆ Provide parents of participating children--
 - (a) **timely information** about Part A programs;
 - (b) **school performance profiles** required under section 1116(a)(3), where the LEA must assess annually the progress of each participating school;
 - (c) **their child's individual student assessment results**, including an interpretation of such results;

(d) a description and explanation of the curriculum in use at the school, the forms of assessment used to measure student progress, and the proficiency levels students are expected to meet;

(e) opportunities for regular meetings to formulate suggestions, share experiences with other parents, and participate as appropriate in decisions relating to the education of their children if parents express an interest in doing this; and

(f) timely responses to the suggestions made by parents that have been offered in meetings such as those described in (e) above; and

- ◆ If the schoolwide program plan is not satisfactory to parents, the school will submit any parent comments on the plan when the school makes the plan available to the LEA.

In addition to determining the most convenient time for parents to attend meetings and the most reliable method for ensuring that parents receive notice of them, school staff may want to consider holding some meetings in locations other than schools.

II. Shared Responsibilities for High Student Performance

School-Parent Compacts

This subsection corresponds to a major theme and new emphasis of the ESEA to link schools, parents, and communities in order to meet the educational needs of the children with whom they are involved. It builds on the belief that school-community links are critical to creating environments where all children can reach high standards. These links are encouraged by the school-parent compact--designed to increase the sharing of responsibility between families and schools for the high performance of students. As a component of the school-level parental involvement policy, all Part A schools are required to develop jointly with the parents of participating children a school-parent compact. If the school-level policy includes a school-parent compact already, the existing compact may be used to meet this requirement as long as it meets the Part A compact provisions explained in subsequent paragraphs, and includes Part A parents.

Since Part A serves as the catalyst to strengthen and improve the entire instructional program in schoolwide program schools, school-parent compacts must be developed with all parents of the students enrolled. In targeted assistance schools, school-parent compacts must be developed jointly with the parents of participating Part A students. Although compacts are a good idea for all families and schools, in targeted assistance schools, they are required only for participating Part A families. (An LEA and school should make it clear to families that obtaining parental signature for such learning compacts is strongly encouraged, yet voluntary.)

What is a school-parent compact?

A compact is a written agreement of shared responsibility that--

- ◆ Defines the goals and expectations of schools and parents as **partners** in the effort to improve student achievement.
- ◆ Outlines how parents, the entire school staff, and students will work together and build a **partnership** to help students achieve high academic standards.
- ◆ Translates the policies and goals of parents and schools into "action" statements. (i.e., What will administrators, teachers, and parents do to make policies and goals a reality?)
- ◆ Serves as a catalyst for collaboration and a guide for ongoing, better communication, interactions and exchanges between school staff and parents.

Why A Compact?

A compact provides the opportunity for developing strong school-family partnerships that will connect families and schools, as well as the broader community, and promote shared responsibility for the high performance of students. These partnerships can--

- ◆ improve school programs and the school climate;
- ◆ increase the skills and leadership abilities of parents;
- ◆ ensure the provision of family services and support;
- ◆ sustain long-term improvement in student academic achievement; and
- ◆ help teachers, parents, and schools to be more effective.

However, the main reason for a compact and school-family partnerships is to help students succeed in meeting the challenging academic standards that all students are expected to master.

What a School-Parent Compact Must Include

There is no required format or standard way to write a compact. A school-parent compact, however, is required to--

- (1) **Describe a school's responsibility to provide high-quality curriculum and instruction in a supportive and effective learning environment that enables**

participating students to meet the State's challenging student performance standards;

- (2) Describe the ways in which parents will be responsible for supporting their children's learning, such as monitoring attendance, homework completion, volunteering in their children's classroom, participating, as appropriate, in decisions relating to the education of their children, and encouraging the positive use of extracurricular time; and
- (3) Address the importance of establishing ongoing, good communication between teachers and parents through, at a minimum, (1) annual parent-teacher conferences in elementary schools to discuss individual student achievement as it relates to provisions of the compact, (2) frequent progress reports to families on student academic progress, and (3) reasonable access to staff and opportunities to volunteer, observe, and participate in classroom activities.

Some Basic Elements of Good Practice for Developing a School-Parent Compact

Identify challenging standards used by your school, LEA, and State to guide curriculum and instruction.

Build ownership--share information and make certain the ideas of the whole community are represented.

Gather input--focus on the vision of teaching and learning created by your school community.

Make certain specific responsibilities are clearly stated, meaningful, and reflect the ideas and beliefs of your school community--make the compact accessible.

Use the compact to--

- clarify expectations;
- plan training activities;
- help administrators clarify efforts; and
- help teachers, parents and students to make choices about how they spend their time.

Continually assess the effectiveness of the compact (at least annually) and use results to implement improvements.

Although compacts must include how schools and families will address the provisions of section 1118(d), they should reflect the ideas and beliefs of individual schools and communities. These requirements are a beginning, offering school communities the flexibility to create a compact that is useful to them. Since compacts define mutual responsibilities at the school building level, good practice suggests that the process of developing common goals and expectations among parents, teachers and administrators is as important as the written compact itself.

Who Participates in Compact Development?

At a minimum, the parents and teachers of participating students and school administrators who will be responsible for carrying out the compact, or their designated representatives, should participate in its development. Student participation will probably vary by grade level. They may be an integral part of the compact team at the secondary and middle school levels, but be involved less extensively at the elementary school level. Other participants may include pupil services personnel, local school board members, and businesses and

agencies with whom partnerships have been formed to support the school, families, and individual children. Schools and parents have the discretion to determine who will be involved in the development of their compacts. Parents and teachers are urged to discuss the compact with students before they sign it, and, when applicable, before any students sign it.

A compact can only be as effective as the ideas it represents and the commitment and support participants give to those ideas. In order to help improve the academic success of students and to ensure that benefits accrue to the entire school community, the school-parent compact must reflect realistically what stakeholders will do, be focused specifically on teaching and learning, and be explicit enough to encourage meaningful contributions toward this end.

SOME IDEAS FOR DEVELOPING A COMPACT

- Step 1:** Create a vision of what your school would be like if it is a "family-friendly school" that has established a strong school-family partnership.
 - Step 2:** Prepare for compact development--Conduct an inventory, create a cross-representative action team, define action team responsibilities.
 - Step 3:** Develop components of a "School Compact for Learning"--Identify objectives and school-family responsibilities.
 - Step 4:** Establish a performance baseline--Agree on processes essential to success and outcomes that would indicate success, and develop performance indicators to measure performance.
 - Step 5:** Each year evaluate the effectiveness of the family-school partnership process--Evaluate against baseline, measure performance, and analyze and report results.
 - Step 6:** Identify improvement strategies based on evaluation findings--Create a partnership improvement team, review results, identify practices that promote better performance, and implement improvements.
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III. Building Capacity for Involvement

To support partnerships among schools, parents, and communities that will improve student achievement, both the school and LEA are required to build the capacity of parents and school staff for strong parental involvement by--

- ◆ providing assistance to participating parents in understanding the National Education Goals, State content and performance standards, State and local assessments, and Title I, Part A requirements; monitoring their children's progress, working with educators to improve the performance of their children; and providing information on how parents can participate in decisions relating to the education of their children.
- ◆ providing materials and training, such as needed literacy training, not otherwise available, and training to help parents work with their children to improve their children's achievement.
- ◆ educating teachers, pupil services personnel, principals, and staff, with the assistance of parents, on how to reach out to, communicate with, and work with parents as equal partners, coordinate and implement parent programs, and build ties between home and school.
- ◆ coordinating and integrating parental involvement programs/activities with Head Start, Even Start, Home Instruction Program for Preschool Youngsters, Parents as Teachers Program, public preschool programs, and other programs, to the extent feasible and appropriate.
- ◆ developing appropriate roles for community-based organizations and businesses and encouraging partnerships between elementary, middle, and secondary schools.
- ◆ conducting other activities, as appropriate and feasible, such as parent resource centers and opportunities for parents to learn about child development and child rearing (beginning at the birth of a child), that are designed to help parents become full partners in the education of their children.
- ◆ ensuring, to the extent possible, that information related to school and parent programs, meetings, and other activities is sent to the home of participating children in the language parents can understand.

To ensure effective involvement of parents and to support a partnership among the school, parents, and the community to improve student achievement, each school and local educational agency may--

- ◆ involve parents in the development of training for teachers, principals, and other educators to improve the effectiveness of such training in improving instruction and services to participating children.
- ◆ provide necessary literacy training if the LEA has exhausted all other reasonably available sources of funds.
- ◆ pay reasonable and necessary expenses associated with local parental involvement activities, including transportation and child care costs, to enable parents to participate in school meetings and training sessions.
- ◆ train and support parents to enhance the involvement of other parents.
- ◆ maximize opportunities for parents to participate in school-related activities by arranging meetings at a variety of times, such as in the mornings and evenings.
- ◆ arrange for teachers or other educators to conduct in-home conferences with parents who are unable to attend such conferences at school.
- ◆ adopt and implement model approaches to improving parental involvement, such as Even Start.

To ensure effective parental involvement and to support a school-parent-community partnership, each school and local educational agency shall--

- ◆ provide such other reasonable support for parental involvement activities under Part A as parents may request.

Strategies for Low-Literacy Families

To help parents who would like to read and write better, Title I guidelines suggest working cooperatively with other programs such as Even Start, Head Start, and the school system's adult literacy program.

Organizational Hints

- * Give parents a chance to practice any major activity in a low-risk setting. Support their efforts to make changes. Some parents may feel more relaxed practicing an activity in a meeting that includes their own child; in other words, explain an activity and then give parents an opportunity to try it out with their child. Others may prefer to practice new activities with a sympathetic adult first, before trying them out with their child at home.
- * Consider meeting in a church or community center or public library--wherever parents feel comfortable--rather than at school.

Goals for a literacy strand

In the family involvement section of the Title I plan, three goals could be included in a literacy strand:

1. Show parents how to participate in sharing books and ideas with their children.
 2. Improve the literacy skills of the adults.
 3. Build adults' confidence in their ability to help their children.
- * From, Boost Family Involvement-How to Make Your Program Succeed under the New Title I Guidelines, by Eleanor C. Macfarlane, Associate Director, Family Literacy Center

Building Parental Capacity in Schoolwide Programs

As explained in Implementing Schoolwide Projects: An Idea Book, to obtain significant increases in parental involvement, successful schoolwide programs actively engage parents in planning and learning and target school-parent programs to the needs of the community and families. Program staff understand the importance of parental involvement and its relationship to student achievement and encourage parents to become their partners. Parental participation is not limited to parents serving as volunteers; they are encouraged to be very

active in all school activities and to form organizations. Cooperation between home and school enables staff to maximize instructional time and to create a school environment where parents as well as children can learn. As the requirements cited below reflect, parents and families have a significant role to play in developing and carrying out a schoolwide program. Section 1114(b) describes these requirements, which include, among others, those for--

- ◆ professional development for teachers and aides, and, where appropriate, parents, pupil services personnel, principals, and other staff to enable all children in the school to meet the State's student performance standards;
- ◆ strategies to increase parental involvement, such as family literary services;
- ◆ teacher-parent conferences for any student who has not met State standards, at which they shall discuss improvement strategies, including what the parents can do to help improve student performance;
- ◆ a comprehensive schoolwide program plan that describes how the school will provide individual student assessment results, including an interpretation of those results, to the parents of a child who participates in the assessment;
- ◆ a comprehensive schoolwide program plan that shall be developed with the involvement of the community to be served and the individuals who will carry it out, including teachers, principals, other staff, and, where appropriate, parents, pupil services personnel, and secondary school students when the plan relates to them; and
- ◆ a comprehensive schoolwide program that shall be available to the LEA, parents, and the public, whose information shall be translated, to the extent feasible, into any language that a significant percentage of the parents of participating children in the school speak.

Building Capacity--Example #1

Successful Schoolwide Programs--A Place Where Parents and Students Can Learn

- * Richmond Elementary School in Salem, Oregon designed "Together with Families," a partnership program that uses a comprehensive approach to developing and cementing school and home relationships. Parents take various leadership roles within the school and community, offering parenting courses and meeting in neighborhood homes to learn how to foster children's learning in school and at home.

Components of other successful schoolwide programs that follow the philosophy that school is a place where parents as well as children can learn include--

- * Teachers videotaping classroom events for parents to broaden their understanding of the program.
 - * Many schools offer ESL classes and General Education Diploma (GED) preparation courses for adults; stock family resource centers or libraries with helpful materials and hold evening classes that teach practical skills, such as computer use.
 - * Parent or teacher liaisons visit parents at home to provide information on child development and parenting, or to keep parents with limited English proficiency informed about their children's progress.
-

EXAMPLE #2--BUILDING PARENTAL CAPACITY: Parent University--A Title I Program in the Bakersfield City School District

"Helping Parents Help Their Children Succeed"

The staff of the school district's Specially Funded Projects wanted to do something spectacular for the coming school year in the area of parental involvement, and that is how the concept of a "Parent University" was formed. A task force was organized of several principals, teachers, consultants, community relations specialists, administrators, and parents and convened for a brainstorming session. After four meetings, a program name and logo were created, and a schedule of sessions for the first year was developed to be held at Bakersfield College.

The first meetings resulted in choosing a topic of interest and finding a qualified speaker to provide informative and lecture-style sessions. Parents were required to attend four sessions throughout the school year in order to graduate from Parent University. Barriers of defeat were removed by offering good child care, transportation, and food. All books and other class materials were provided as well, at no cost to parents.

First year evaluation results of the Parent University program were very positive. The findings indicated, however, that parents wanted to talk to each other more in order to find out how other parents were solving problems with their children. Consequently, the quest began for top-quality parenting classes. The Center for the Improvement of Child Caring (CICC) was contacted to obtain information on the parenting training programs it makes available to parents and parent instructors. As a result, Parent University expanded its offerings to include five parenting programs from CICC--*Active Parenting*, *Active Parenting of Teens*, *Confident Parenting*, *Effective Black Parenting*, and *Los Ninos Bien Educados*. The task force is always looking for new and effective programs, and has added two more in the last two years--*Developing Capable People*, *Megaskills*.

Parenting classes are offered in English, Spanish, and Laotian, and are held during the week and on Saturday mornings. The child care program provides so many activities for children that they love to come to class with their parents.

Since the inception of Parent University in 1990, there have been 1,000 parents, grandparents, step-parents, foster parents, guardians, aunts, and uncles to graduate. Parents must complete 75 percent of a class to graduate and earn a diploma. Some of the graduates are now trainers.

Accessibility

To the extent practicable, LEAs and schools must provide full opportunities for the participation of parents with limited English proficiency or with disabilities, including providing information and school profiles in a language and form that such parents understand.

Some ways in which a school system can promote parental participation by the parents of students with limited English proficiency are--

- (1) home visits and telephone calls by those who speak the home language;
- (2) family literacy programs that bring parents into the school community to strengthen their role in improving the education of their children;
- (3) making available to families staff proficient in multiple languages to translate any materials that are disseminated to them or the school community, and to serve as interpreters at school functions;
- (4) making available to families classes in English as a Second Language; and
- (5) preparing school notices and school newsletters in the home language, when possible.

It is important for schools and LEAs to recognize the strengths of extended family structure of some ethnic groups, to become familiar with various cultural patterns and expectations, and to keep learning from families in order to work effectively in a school-home partnership.

EXAMPLE-Extended Day Parental Involvement Program with a Component for Limited English Proficient Families

The Twilight program offered by Elk Grove Unified School District in Elk Grove, California combines Title I funds with district and Emergency Immigrant Program funds to offer an extended day program for students and their families three days a week from 4:00 to 7:00. Programs offered through Twilight under the umbrella of "Learning for the Whole Family" include preschool for four year-olds, parent workshops, adult education, and homework and tutoring for kindergarten through high school students. About 1/3 of the families attending are still learning English in five major language groups: Vietnamese, Russian, Spanish, Cantonese, and Hmong. All parents of participating students are involved in Twilight in some way such as attending parent workshops, parent-child tutoring, or volunteering in the preschool or Homework Center. Adult education classes offered at Twilight enrolled 153 parents in English, Government, and preparation for the General Equivalency Diploma. Participation of parents of Title I students has doubled as a result of the Twilight Program.

Parental Information and Resource Centers

Title IV of the Goals 2000: Educate America Act authorizes grants to nonprofit organizations alone or in consortia with LEAs to establish and fund parental information and resource centers. At these centers, training, information, and support will be provided to (a) parents of children from birth to age five; (b) parents of children enrolled in elementary and secondary schools; and (c) individuals who work with these parents. The establishment of the centers is for the purpose of increasing parents' knowledge of and confidence in child-rearing activities, such as teaching and nurturing their young children; strengthening partnerships between parents and professionals in the working relationship between home and school and meeting the educational needs of children from birth to age five; and enhancing the developmental progress of the children assisted.

Under Part A of Title I, funds can also be used to establish school- or district-based parent centers. The schools and LEAs that have Title I centers have found that home-school partnerships are strengthened, parents become more active in their children's education at home as well as at school, and the interest of families in improving their educational skills is stimulated. Parent resource centers can also be particularly effective in making parents with disabilities or limited English proficiency, who may not feel as comfortable in a classroom setting, feel more comfortable.

In States where Goals 2000 parental information and resource centers have been established, LEAs and schools receiving Part A assistance must assist parents and parent organizations

by--(1) informing them of the existence and purpose of these centers, (2) providing them with a description of the services and programs provided by the centers, (3) advising them on how to use the centers, and (4) helping them to contact the centers.

Title I Parent Center--Natchez, Mississippi

The Natchez-Adams Parent Center in the Natchez-Adams School District serves Title I students and their families. The Parent Center focuses its efforts on involving parents and families in their children's academic progress. Staff at the center have developed a set of procedures which are responsive to a child's needs when he or she is having difficulty mastering skills taught in the classroom. During a school/family conference the teacher explains the area in which the child is having difficulty and completes a "parent assistance form" (known in the district as a "green sheet"). This form indicates the skill the teacher would like the student to work on in the next six-week period (e.g., long division). The parent then takes the green sheet to the Parent Center, and staff at the Center provide materials which promote skills in the needed area. They demonstrate to the parent how to use the materials with their child. Materials, which are for home use, typically include games, manipulatives, and puzzles, and focus on activity-based learning. A follow-up form is sent to the referring teacher informing her/him of the parent's visit.

Teachers can also request that Parent Center staff conduct a home visit with parents who are not attending conferences or who are difficult to contact. The teacher completes a "yellow form" and Center staff visit the family to encourage parents to meet with the teacher and to use the resources in the Parent Center. In addition, families can check out computers and software selected to meet the specific needs of the child.

Professional Development

To enable Part A students to meet the State's challenging content and student performance standards, an LEA must provide high-quality professional development that will improve the teaching of academic subjects consistent with the State standards. In accordance with this requirement, an LEA has the option to implement professional development activities concerning ways that teachers, principals, pupil services personnel, and school administrators may work more effectively with parents. Where there are parents and families with limited English proficiency, this can include classes for teachers and school staff on subjects such as Spanish as a second language (or other appropriate languages), effective teaching strategies for LEP students, and multicultural awareness and communication.

There is also a parental participation provision set forth in section 1119(d) that permits parents to participate in Part A professional development activities if the school determines that parent participation is appropriate.

STAFF DEVELOPMENT

Several midwestern States implement Title I school improvement activities through team institutes. Home/School/Community teams, made up of principals, teachers of Title I participants, and parents of Title I participants attend week-long institutes where they are trained in specific techniques and provided with materials so that they can train staff and parents at their individual school sites. The institutes assist them in the development of strategies that improve weaknesses by building on their school's strengths. Teams return to their schools with school improvement plans ready for implementation with the rest of their staffs. Topics include communication, advocacy, family literacy, helping your child at home and gang and drug prevention.

LEA Process for School Review and Improvement

The LEA must provide for a local annual review of each Part A school, using State assessments, to determine whether the school is making adequate progress toward enabling students to meet the State's challenging student performance standards. This review will also provide the information each school needs to continually refine the program of instruction to enable children to meet the State's challenging performance standards. The LEA must publicize and disseminate the results of this review in individual school performance profiles to teachers and other staff, parents, students, and the community. [See section 1116(a)(3)]

Schools that for two consecutive years fail to meet the State's definition of adequate progress are designated as schools in need of improvement. In accordance with section 1116(c)(2)(i), these schools are required, in consultation with parents, the LEA, and, for schoolwide programs, the school support team, to revise their school plan in order to improve the performance of participating children in meeting the State's challenging student performance standards. When a State has not yet developed student performance standards, parents should be involved in deciding how to place schools in improvement.

While the LEA reviews the progress of schools, the State reviews the progress of the LEA. The State reviews annually the progress of each LEA to determine whether it is making adequate progress. The State must publicize and disseminate to LEAs, teachers and other staff, parents, students, and the community the results of the State review.

Section 1116(d)(4)(A) requires an LEA, when it has been identified by the SEA for improvement, to make revisions to its Title I plan, in consultation with schools, parents and educational experts, in ways that have the greatest likelihood of improving the performance of schools in meeting the State's student performance standards.

The involvement of parents and families in each stage of school improvement is invaluable. Continually refining a school's program of instruction to enable students to make the progress that they need requires a team effort. As research has indicated, in order to achieve maximum effectiveness, parents along with teachers must occupy center stage in such efforts.

PROFESSIONAL DEVELOPMENT



PROFESSIONAL DEVELOPMENT

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PROF DEV

PROFESSIONAL DEVELOPMENT

"The Nation's teaching force will have access to programs for the continued improvement of their professional skills and the opportunity to acquire the knowledge and skills needed to instruct and prepare all American students for the next century." (Goal 7 - National Education Goals)

INTRODUCTION

Professional development plays an essential role in successful education improvement. Professional development serves as the bridge between where prospective and experienced educators are now and where they will need to be to meet the new challenges of guiding all students in achieving to higher standards of learning and development.

Professional development is an integral component of most programs within the ESEA. The Title II--Dwight D. Eisenhower Professional Development Program, in particular, focuses exclusively on improving teaching and learning through sustained and intensive high-quality professional development activities in the core academic subjects. Title II has close links to Title I. To receive a subgrant under Title II, an LEA must conduct an assessment of its professional development needs. This assessment must be carried out with the involvement of teachers, including teachers in schools receiving assistance under Title I, Part A. It must result in a plan that describes how professional development activities will contribute to the LEA's overall efforts for school reform and educational improvement, addressing, in particular, how those activities will meet the needs of teachers in Title I schools.

Title I, Part A also has specific professional development requirements. Thus, SEAs and LEAs implementing both Title II and Title I must closely coordinate their professional development activities to ensure that teachers and staff in Title I schools, in particular, are properly equipped to help participating children achieve to high standards.

PROFESSIONAL DEVELOPMENT UNDER TITLE I, PART A

Local responsibilities

Each LEA that receives Title I, Part A funds must provide high-quality professional development that will improve the teaching of academic subjects, consistent with the State's content standards, to enable children to meet the State's student performance standards. An LEA may satisfy this requirement through districtwide professional development activities or activities implemented by each Title I school. Regardless, professional development activities must be designed by principals, teachers, and other staff in Title I schools. Parents may also be involved in designing professional development activities.

Professional development activities under section 1119 of Title I must--

- ◆ support instructional practices that are geared to challenging State content standards and create a school environment conducive to high achievement in the academic subjects.
- ◆ support LEA Title I plans and schoolwide program plans.
- ◆ draw on resources available under other programs such as Title III of Goals 2000, Title II of ESEA, and from other sources.
- ◆ include strategies for developing curricula and teaching methods that integrate academic and vocational instruction (including applied learning and team teaching) if an LEA determines such strategies are appropriate.
- ◆ include strategies for identifying and eliminating gender and racial bias in instructional materials, methods, and practices.

An LEA must describe in its Title I plan the strategies of the LEA and its Title I schools to provide professional development. In designing professional development programs, please note:

- ◆ all school staff in schoolwide program schools may participate.
- ◆ all school staff in targeted assistance schools may participate, if such participation will result in better addressing the needs of participating students.
- ◆ knowledge of effective teaching strategies that is gained through Title I professional development activities may be shared with teaching staff who do not work with Title I participants.
- ◆ parents may participate in professional development activities if a school or LEA determines that parental participation is appropriate.

An LEA must ensure that sufficient resources are devoted to carry out professional development activities effectively in each Title I school. An LEA may reserve these resources off-the-top of the LEA's Title I allocation, each Title I school may use Title I funds it receives to provide professional development, or the LEA may use a combination of these approaches.

If a school has been identified as needing improvement under section 1116, that school must improve the skills of its staff by providing effective professional development activities as part of its school improvement plan. The school must--

- ◆ devote to professional development, over two consecutive years, an amount equivalent to at least 10 percent of the Title I, Part A funds received by the school during one fiscal year; or
- ◆ otherwise demonstrate that the school is effectively carrying out professional development activities.

In meeting this requirement, the school may use funds from any source. Principals, teachers, and other school staff must decide how to use these funds set aside for professional development activities.

EXAMPLE:

Professional Development for Title I Instruction

The Denver Public Schools offer Title-I instruction to eligible students in preK-12. Paraprofessionals and teachers often team to provide instruction that is coordinated closely with the regular education program. They receive ongoing, indepth professional development that is job-related and site-specific. New paraprofessionals receive training on basic and advanced math skills, instructional techniques, discovery, program curriculum, standards and assessment, learning, reporting to parents, working with academic concepts and techniques, and family involvement activities.

In addition to receiving training in the computer system used in instruction, bimonthly professional development opportunities and a monthly newsletter are provided. The program manager, who coordinates a math program at the school polls teachers and paraprofessionals for common concerns and interests for future staff development. Although paraprofessionals and teachers may receive release time to attend, some sessions are offered after school.

Paraprofessionals are encouraged to take college classes and receive high quality individual training. In 637 middle and high schools, paraprofessionals run a tutoring project for students who require additional assistance in reading. Although the paraprofessionals report to the principal, they work closely with Title I and regular education teachers in the building. All tutors attend mandatory afterschool workshops for two hours each month. Based on student needs, tutors choose professional development topics, including using a diagnostic reading inventory, responding to students' writing, administering the program's four-day writing sample evaluation, and Socratic questioning.

EXAMPLE:

Migrant Head Start (This example illustrates how professional development paid from resources other than Title I can complement a Title I preschool or early childhood program. Of course, similar professional development activities may also be funded by Title I.)

In the Dystart Unified School District in El Mirage, Arizona, a Migrant Head Start Program features three strands of training for migrant parents. Level I provides sessions on child behavior and development, with discussion of real-life examples and frustrations with child-rearing. After Level I, parents work as trained interns in the prekindergarten program or run the parent activity center. Parents in Level II serve as paraprofessionals in kindergarten. Training through Level III allows them to become paraprofessional parent trainers, known as mentors. These individuals recruit and train parents in both the preschool program's curriculum and parenting skills. The program encourages mentors to earn GEDs and other certification at the local community college, which offers Title VII education grants and has a working relationship with the program. Some mentors have received funds from the migrant program to pursue training and education. Some parent volunteers have gone on to pursue GEDs and other certifications, including higher education degrees, while others have earned their Child Development Associate certificates and are Head Start teachers.

EXAMPLE:**Training for teachers who work with culturally and linguistically diverse students**

Specialized training is provided in the use of the Content-Based Literacy Model (CBLM) with culturally and linguistically diverse students. Multicultural training for new teachers is designed to improve their skills in communicating and working effectively with culturally diverse students and their families. To strengthen staff focus on appropriate instructional strategies for culturally diverse students, a school-by-school half day inservice was delivered by Dearborn's curriculum specialists. Training focused on Dearborn's new direction, which has shifted from remediation to acceleration, with trainers demonstrating effective teaching strategies to accelerate learning for all students across the curriculum. In collaboration with Wayne State University in Detroit, MI, the Multifunctional Resource Center at the University of Wisconsin - Madison, and the Evaluation Assistance Center - East, on-site college courses funded by Title VII and Chapter 1 funds were offered to teachers and paraprofessionals during the school year and the summer. Courses were tailored to address the unique needs of the school system's diverse student (and family) population. Course topics include ESL/Bilingual and literacy development strategies, parent involvement techniques, and thematic instruction. This collaborative effort resulted in developing a career ladder program for paraprofessionals to enable them to pursue professional status as certified teachers, as proposed by Lyons (1993), Bliss (1991), and Sergiobanni (1994).

EXAMPLE: Master teacher

In order to incorporate professional development and direct instruction into the regular school day, one district, in consultation with its principals, teachers, and parents of Title I participants, adopted the "master teacher" concept and incorporated it into all of its schoolwide program and targeted assistance schools. Given the particular needs of children in a school, a master teacher(s) assists the school's teachers to develop different lessons. In addition to giving demonstration lessons in the classroom, the master teacher coaches the teachers and participates in the design of many other professional development activities. The master teacher also provides direct instruction to groups of children.

EXAMPLE:

Effective Grades 1-6 Hands-On Instructional and Alternative Assessment--Mathematics Strategies for Preparing for the North Carolina Mathematics End-Of-Course Test. (Title II Eisenhower Math and Science Project)

Fourteen mathematics teachers of grades 1-6 attended this year-long course, during which they familiarized themselves with strategies for teaching and assessing students' problem-solving and thinking skills. Participants were trained to become lead teachers in their school systems and were then expected to complete ten hours of peer coaching. Two of the peer coaching hours were observed by a project consultant, the project coordinators, and/or the curriculum supervisor. During the workshop the participants developed workbooks with sample lessons for each grade level (1-6) that can be used by lead teachers during peer coaching sessions. Workshop sessions stressed teaching elementary mathematics skills through the effective use of manipulatives, problem solving, higher order thinking, and various alternative assessment strategies. During a follow-up session, participants had the opportunity to discuss their plan for implementing two peer coaching sessions in each school. Time was also reserved to allow them to discuss concerns and questions they had about the planning and development of peer coaching sessions. Participants then convened for another sharing session. (This model can easily be coordinated with or adapted for Title I programs.)

Contact: Dr. Leo Edwards, Jr., Fayetteville State University, NC.

EXAMPLE: Reading Recovery

Reading Recovery, an early intervention program that enables the lowest 20% of first graders "at risk" of reading failure to develop effective strategies to read at average classroom levels, was developed in New Zealand by Dr. Marie Clay. Once children complete the program, they usually need no further remediation in reading. Teacher training and continuing education are two of the five key components of Reading Recovery. Two levels of training are provided: (a) a year of academic course work prepares qualified individuals to teach Reading Recovery teachers at a district site; and (b) a year-long academic course prepares qualified individuals to teach Reading Recovery leaders. All teachers, teacher leaders, and instructors of teacher leaders must be involved in a year-long training period where they work with four students on a daily basis, make site visits to established sites to observe trained teacher leaders in action and learn to use the Reading Recovery procedures. Teacher leaders are additionally prepared to provide training, technical, and clinical support for Reading Recovery teachers. Instructors of teacher leaders are prepared to establish a state university Reading Recovery instructional center. Teachers work with students for an entire training year to learn and understand the Reading Recovery process.

Two follow-up programs ensure the continued quality of the implementation of the program. Continuing education: After the completion of the training year, the teacher leader maintains continuing contact with teachers and continues to monitor student progress. Teachers meet several times each year for inservice sessions in order to continue to develop critical knowledge and refine their skills. Teacher leader instructors and teacher leaders also attend two annual conferences. Monitoring: Reading Recovery teachers are monitored and supported by teacher leaders and teacher leaders are monitored and supported by the university faculty/staff from which they received their course work.

Instructional aides: If an LEA or Title I school uses Title I funds to employ instructional aides, the aides must--

- ◆ possess the knowledge and skills sufficient to assist participating children in meeting the State's performance standards.
- ◆ have a secondary school diploma, or its recognized equivalent, or earn either within two years of employment. An aide does not need to meet this requirement if the aide possesses proficiency in a language other than English that is needed to enhance the participation of limited-English-proficient children in Title I programs.

- ◆ be under the direct supervision of a teacher who has primary responsibility for providing instructional services to participating children.

An LEA must include instructional aides in professional development activities, if feasible. In addition, an LEA or Title I school may use Title I funds to create career ladder programs for Title I instructional aides to obtain the education necessary to become licensed and certified teachers.

EXAMPLE:**Teaching Opportunities for Paraprofessionals**

Connecticut's Teaching Opportunities for Paraprofessionals (TOP) program aims to increase the number of certified minority teachers serving students in the state's urban districts. Although only 26 percent of students statewide were minorities in 1992-93, the percentage was far higher in urban districts. To help provide role models and make the teaching force more reflective of the student population, the state created this paraprofessional-to-teacher program that provides financial, social, and academic support to support paraprofessionals' professional development and funds replacement paraprofessionals at the district. Through coordination with district and higher education partners, many paraprofessionals are able to complete their degrees and become regular classroom teachers.

EXAMPLE:**Training Opportunities for Bilingual Paraprofessionals**

The University of Southern California, in collaboration with California (Cal.) State Dominguez Hills, Cal. State Los Angeles (L.A.), and Loyola Marymount University and school districts in the L.A. area, provide a training program for bilingual paraprofessionals who plan to work toward completion of B.A. degrees and a B-CLAD credential with multiple subject specialization. The project is designed to reduce the obstacles to completing degrees and credentials by providing financial, social, academic, and school-site support. Participants are selected by individual school committees which include administrators, parents, teachers, and community members. Participants are enrolled in coursework at one of the participating higher education institutions. Each participant is assigned a school-based faculty mentor to provide support related to academic and social needs. Project seminars and practica provided at the school site enhance academic coursework. Supplemental workshops assist participants in preparing for State-mandated examinations. To encourage participants to continue their training through completion of B-CLAD, the project will provide financial assistance during the course of the credential training.

Program Contact: Reynaldo Baca, (213)740-2360.

EXAMPLE:**Training for Paraprofessionals in Early Childhood Education Programs**

In the Calcasieu School District in Lake Charles, Louisiana, early childhood education programs rely heavily on the skill and expertise of paraprofessionals. Recognizing the important role paraprofessionals play in supporting and contributing to the educational goals of the early childhood education programs, the district has developed a training program that not only focuses on clarifying their roles and responsibilities but also improves their instructional skills.

Each fall, the state holds an early childhood education conference; teachers and paraprofessionals who work in the programs receive training in appropriate practices and techniques for maximizing the impact of the center-based activities in their classrooms. Sessions are offered on a range of topics, including room arrangement, classroom management, and assessment. The school district offers a series of workshops throughout the year for teachers and paraprofessionals to work together, encourages paraprofessionals who are experiencing difficulties in fulfilling their duties to observe and work with a mentor at another site. Group discussions, role playing and modeling, and providing individual feedback are important features of these training sessions. Teachers and paraprofessionals agree that one major benefit of the training they have received is that they now work more effectively as a team in the classroom. By ensuring that teachers and paraprofessionals participate in the same training and receive the same information, district and school staff believe students receive a higher quality education and a richer school experience.

State responsibilities

Although most professional development activities will be carried out at the LEA and school level, each SEA has a significant role in providing technical assistance to enable LEAs and schools to carry out those activities. An SEA must review each LEA's plan to determine if the LEA's professional development activities--

- ◆ Are tied to challenging State student content and student performance standards.
- ◆ Reflect current research on teaching and learning.
- ◆ Are designed to have a positive impact on teachers' performance in the classroom.
- ◆ Contribute to continuous improvement in the classroom or throughout the

school.

- ◆ Include methods to teach children with special needs.
- ◆ Are developed with the extensive participation of teachers.
- ◆ Include gender-equitable education methods, techniques, and practices.

In addition, each SEA must--

- ◆ implement a system of school support teams, including provision of necessary professional development for those teams. **[See schoolwide program chapter.]**
- ◆ work with other agencies, including educational service agencies or other local consortia, and institutions to provide technical assistance to LEAs and schools, including technical assistance in providing professional development and school support and improvement.

If educational service agencies exist, the SEA must consider providing professional development and technical assistance through such agencies. If educational service agencies do not exist, the SEA must consider providing professional development and technical assistance through other cooperative agreements such as through a consortium of LEAs.

Q1. Is there a cap on the amount of Title I, Part A funds that may be spent on professional development activities?

A. No. An LEA and its Title I schools may spend as much funds as necessary on professional development activities to improve the achievement of participating children.

Q2. Must a specific amount of Title I, Part A funds be spent on professional development activities?

A. An LEA and its Title I schools are not required to spend a specific amount of Title I, Part A funds on professional development activities, unless a school has been identified as needing improvement under section 1116. However, sufficient resources must be devoted to carry out effectively the professional development activities required under section 1119.

Q3. May Title I funds spent on professional development activities be taken into consideration in meeting the local cost-sharing requirement under Title II?

A. Yes. Any Title I, Part A funds spent on professional development activities may be

used to meet the local cost-sharing requirement under Title II (section 2209).

Q4. How may professional development activities be provided?

- A. Title I schools and LEAs may provide professional development activities directly or through consortia arrangements with other schools or LEAs, educational service agencies or other local consortia, institutions of higher education, or other public or private institutions or organizations.

Q5. May private school teachers and parents participate in professional development activities?

- A. Private school officials and staff who work directly with private school children who participate in Title I may be included in professional development activities. In addition, parents of private school children may participate in professional development activities, if appropriate. Public school teachers who provide Title I services to private school children must be provided professional development activities, as needed.

Professional Organizations/Resources

To maintain skills, credibility, and value to schools, teachers and school staff members need to continue their growth. They need periodic updates on the research in human resource development, training, and adult learning. Attending conferences, receiving publications, and joining networks of national organizations can facilitate this growth. Some of the possible organizations and/or resources include:

American Council on the Teaching of Foreign Languages, Inc. 6 Executive Plaza, Yonkers, NY 10701-6801. For copies of draft standards, other available material, or information about opportunities to comment on the standards, contact Jamie Draper at (914) 963-8830 or fax (914) 936-1275.

American Association for the Advancement of Science. 1333 H Street, NW, Washington, DC 20005. The AAAS has developed Project 2061 and Science for All Americans, which provide an outline of science standards. For more information or materials, call (202) 326-6680 or fax (202) 371-9849.

American Association for Adult and Continuing Education. 1101 Connecticut Avenue, NW, Suite 700, Washington, DC 20036. Call (202) 429-5131 or fax (202) 223-4579. The AAACE is a national association interested in adult education issues.

American Vocational Association. 1401 King Street, Alexandria, VA 22314. Call (703) 683-3111 or fax (703) 683-7424. The AVA is the national association for vocational education.

Association of American Colleges and Universities. 1818 R Street, Washington, DC 20009. Call (202) 387-3760.

Association for Supervision and Curriculum Development. 1250 North Pitt Street, Alexandria, VA 22314. Call (703) 549-9110. The ASCD provides information, assistance, and conferences for those involved in curriculum, instruction, supervision, and leadership in the schools.

Association of Teacher Educators. 1900 Association Drive, Suite ATE, Reston, VA 22091. Call (703) 620-3110 or fax (703) 620-9530. The ATE is the national association for those who teach education; the association is active in teacher training/staff development issues. They are reviewing standards in teacher education.

Center for Civic Education. 5146 Douglas Fair Road, Calabasas, CA 91302-1467. For copies of draft standards, other available material, or information about opportunities to comment on the standards, contact Margaret Branson at (818) 591-9321 or fax (818) 591-9330 or contact Mark Molly at (202) 265-0529 or fax (202) 265-0710.

Council for Exceptional Children. 1920 Association Drive, Reston, VA 22091-1589. Call (703) 620-3660 or fax (703) 264-9494. The CEC is the national association for children with disabilities.

Council of Chief State School Officers. One Massachusetts Avenue, NW, Suite 700, Washington, DC 20001-1431. Call (202) 336-7015 or fax (202) 408-8076. The CCSSO is the national association for state education directors. The Council is interested in all aspects of the Goals, especially on the state level.

Educational Resources Information Center (ERIC). 7420 Fullerton Rd., Suite 110, Springfield, VA 22153. Call 1-800-433-ERIC. See U.S. Department of Education Resources information.

Fund for the Improvement of Postsecondary Education. Teacher Education Programs, U.S. Department of Education, 600 Independence Avenue, SW, Washington, DC 20202.

Goals 2000. Department of Education, Office of the Secretary, 600 Independence Avenue, SW, Washington, D.C., 20202. Call (202) 401-3078. Goals 2000 is the U.S. Department of Education's office that administers the National Education Goals and programs to meet the Goals.

Home and School Institute. MegaSkills Education Center, 1500 Massachusetts Avenue, NW, Washington, DC 20005.

International Reading Association. 444 North Capitol Street, NW, Suite 422, Washington, DC 20001. Call (202) 624-8827 or fax (202) 624-8826. The IRA is interested in reading and other related curriculum issues.

National Academy of Sciences. National Research Council, 2101 Constitution Avenue, NW, Washington, DC 20418. For copies of draft standards, other available material, or information about opportunities to comment on the standards, call (202) 334-1399.

National Association for Bilingual Education. 1220 L Street, NW, Suite 610, Washington, DC 20005-4018. Call (415) 469-4781 or fax (415) 239-1837. The NABE promotes the provision of bilingual education services to children.

National Association for the Education of Young Children. 1509 16th Street, NW, Washington, DC 20036-1426. Call (800) 424- 2460. This association is dedicated to improving the quality of care and education provided to children from birth to age 8. It offers publications, training materials, and policy-related information and administers the National Academy of Early Childhood Programs, a voluntary national accreditation system for high-quality early childhood programs.

National Association of Elementary School Principals. 1615 Duke Street, Alexandria, VA

22314-3483. Call (703) 684-3345 or fax (703) 548-6021. The NAESP serves as an advocate for high-quality educational and social programs to benefit children and youth.

National Association of Secondary School Principals. 1904 Association Drive, Reston, VA 22091. Call (703) 860-0200 or fax (703) 860-5432. The NASSP is the national association for high school and middle school principals; the association is interested in a variety of curriculum, school safety, and other Goals- and standards-related issues.

National Black Child Development Institute. 1023 15th Street, NW, Suite 600, Washington, DC 20005.

National Board for Professional Teaching Standards. 1900 M Street, NW, Suite 210, Washington, DC 20036. Call (202) 463-3980 or fax (202)463-3008. The National Board provides a voluntary evaluation program leading to national teacher certification. The Board is establishing high and rigorous standards for teaching, while providing states and localities with great flexibility in assessment and strategies. It is also working to improve public recognition of the achievements and abilities of teachers.

National Center for Family Literacy. Waterfront Plaza, Suite 200, Louisville, KY 40202-4251.

National Center for History in the Schools at UCLA. 231 Moore Hall, 405 Hilgard Avenue, Los Angeles, CA 90024. For copies of draft standards, other available materials, or information about opportunities to comment on the standards, contact Linda Symcox at (310) 825-4702.

National Council for History Education. 26915 Westwood Road, Suite B2, Westlake, OH 44145. Call (216) 835-1776 or fax (216) 835-1295. The council provides leadership in history education, develops connections between schools and colleges, and promotes greater inclusion of history in the curriculum.

National Council for the Social Studies. 3501 Newark Street, NW, Washington, DC 20016. Call (202) 966-7840 or fax (202) 966-2061. The NCSS provides leadership in the field of social studies education, assists in the professional development for social studies educators, and strengthens the advancement of social studies education.

National Council of Geographic Education. Geography Standards Project, 1600 M Street, NW, Washington, DC 20036. For copies of draft geography standards, other available materials, or information about opportunities to comment on the standards, contact Heather Scofield at (202) 775-7832 or fax (202) 429-5771.

National Council of Teachers of English. 111 West Kenyon Road, Urbana, IL 61801. Call (217) 328-3870 or fax (217) 328-0977. The council works to help teachers of English and

develop curriculums, materials, and standards in English.

National Council of Teachers of Mathematics. 1906 Association Drive, Reston, VA 22091. Call (703) 620-9840 or fax (703) 476-2970. The 92,000-member NCTM improves the quality of mathematics teaching in the schools. It produced the NCTM standards for curriculum and evaluation (1989) and teaching (1991).

National Middle Schools Association. 4807 Evanswood Drive, Columbus, OH 42339-6292. Call (614) 848-8211 or fax (614) 848-4703. NMSA members are educators and parents interested in middle school education.

National School Board Association. 1680 Duke Street, Alexandria, VA 22314. Call (703) 838-6700 or fax (703) 683-7590. The NSBA represents the nation's school board members, who determine policy for public school districts. They have produced materials to help school boards set priorities for districts based on polling of school personnel, community residents, students, and recent graduates.

National Science Teacher Association. 1840 Wilson Boulevard, Arlington, VA 22201. Call (703) 243-7100 or fax (703) 243-7177. The NSTA works to improve the teaching of science and the way science is presented in the schools.

National Staff Development Council. P.O. Box 240, Oxford, OH 45056. Call (800) 727-7288 or (513) 523-6029. This nonprofit membership association works to improve schools through individual and organizational development. NSDC offers an annual conference, academies, consulting, a bulletin board on America Online, and publications. NSDC has produced national standards for staff development at the elementary, middle, and secondary levels.

Office of Educational Research and Improvement. U.S. Department of Education, 555 New Jersey Avenue, NW, Washington, DC 20208, 1-800-USA-LEARN. The OERI has general information about content standards as well as information and research reports on each of the National Education Goals. They conduct research in ways to improve education and teaching and administer several regional education labs.

Parents as Teachers National Center, Inc. 9374 Olive Boulevard, St. Louis, MO 63123.

Phi Delta Kappa. Center for Professional Development, P.O. Box 789, Bloomington, IN 47402. Call (800) 766-1156. PDK, the professional fraternity in education, offers scholarships, policy analysis, publications, and professional development opportunities.

Secretary's Commission on Achieving Necessary Skills (SCANS). U.S. Department of Labor, 200 Constitution Ave, NW, Washington DC 20210, 1-800-788-SKILL. The commission is appointed by the Secretary of Labor to determine the skills young people need to succeed in the world of work. The Commission's fundamental purpose is to encourage a

high-performance economy characterized by high-skill, high-wage employment.

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PROVIDING SERVICES TO ELIGIBLE PRIVATE
SCHOOL CHILDREN



PROVIDING SERVICES TO ELIGIBLE PRIVATE SCHOOL CHILDREN

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PRIVATE

PROVIDING SERVICES TO ELIGIBLE PRIVATE SCHOOL CHILDREN

INTRODUCTION

The Title I program provides supplemental educational services for eligible public and private school students to assist those children in acquiring the knowledge and skills necessary to meet the challenging student performance standards that all children are expected to meet.

Section 1120 of Title I requires that an LEA provide eligible private school children with Title I educational services or other benefits that are equitable to those provided to eligible public school children. Title I services for eligible private school children must be developed in consultation with private school officials.

CONSULTATION

Section 1120(b) requires that, to ensure timely and meaningful consultation, an LEA consult with appropriate private school officials during the design and development of the LEA's Part A programs, on such issues as the following:

- How the children's needs will be identified;
- What services will be offered;
- How and where services will be provided;
- How the services will be assessed; and
- The size and scope of the equitable services to be provided to eligible private school children, and the amount of funds to be used for those services.

Consultation must take place before an LEA makes any decisions that affect the opportunities of eligible private school children to participate in Title I programs. This includes decisions about reserving funds "off the top" of the LEA's allocation for LEA-wide activities before funds are allocated to participating areas and schools. In addition, because generation of funds and eligibility of private school children for services are dependent upon residence in a participating public school attendance area, an LEA must share the results of its selection process with private school officials early in the consultation process. Other information that must be provided in the consultation process includes the following data on each participating area: grade span, the number of low-income public and private school children residing in the area, and the per-pupil allocation of each public school participating area. (See discussion on pp. 3-10 of this policy guidance.)

Consultation should include representatives of private schools and central administrative offices, if any. It would be helpful if private school officials make clear to the LEA which officials should be included in the consultation process, and what the roles of various individuals will be. It may be useful to include in the consultation process any third-party contractors providing Title I services for private school children.

A unilateral offer of services by an LEA with no opportunity for a discussion is not adequate consultation. Only after discussing all the facets of the provision of services does the LEA make the final decisions with respect to the Title I services to be provided to eligible private school children. If the LEA and private school officials cannot resolve an issue through consultation, the SEA may help the parties resolve the matter without requiring a formal complaint.

EXAMPLE:

Many LEAs provide advance notice of scheduled meetings through a published yearly calendar, letters, telephone calls, or a published notice. A letter of invitation explaining the intent of Title I (including the role of private school officials) is often the means LEAs use to inform private school officials about the Title I program and initiate the consultation process.

Ongoing coordination of services is essential in order to provide private school participants an optimal opportunity to reach challenging standards. Thus, it is very important that Title I teachers of private school participants and LEA officials consult with private school officials and instructional staff in order to coordinate Title I services with regular classroom instruction. These coordination activities should not take place during instructional time and may occur at a public or private school site, a neutral site, or by telephone.

EXAMPLE:

In one program the Title I teachers have a simple form for regular classroom teachers to complete periodically, informing the Title I teacher of the child's individual needs as well as subject content and skills being taught in the regular classroom. The Title I teacher also has a copy of the child's textbook used in the regular classroom. Classroom teachers send notes to the Title I teacher as necessary.

GENERATING FUNDS FOR SERVICES TO ELIGIBLE PRIVATE SCHOOL CHILDREN

Under section 1113(c) of Title I, public school attendance areas are generally eligible to participate in Title I if the percentage of children from low-income families is at least as high as the percentage of children from low-income families in the LEA as a whole. An LEA ranks its eligible areas and selects, in rank order, those areas that the LEA will serve. For areas above 75 percent poverty, the LEA must serve them without regard to grade span; thus, high-poverty middle and high schools must be served. After an LEA has selected for services all areas above 75 percent poverty, the LEA may serve lower ranked areas by grade-span groupings. Thus, the LEA may decide to serve, for example, only elementary schools or a combination of elementary and middle schools, but not high schools.

In identifying and ranking eligible public school attendance areas, an LEA generally should, if possible, take into consideration data on the number of children from low-income families who reside in each area and attend private schools. For an LEA to include numbers of such children, however, would require adequate poverty data on private school children throughout the LEA. Because obtaining these data for the entire LEA may be extremely difficult, an LEA may identify and rank its eligible school attendance areas on the basis of children from low-income families attending public schools only.

Under section 1113(c) of Title I, an LEA must allocate funds to a participating public school attendance area or school on the basis of the total number of children from low-income families, including low-income children attending private schools. Thus, the LEA, in consultation with private school officials, must obtain the best available poverty data on private school children who reside in participating attendance areas. Because private school officials may have access to some sources of poverty information not easily accessible to public school officials, it is very important that public and private school officials cooperate in this effort.

Collecting Poverty Data on Private School Children

An LEA may use the following methods to obtain poverty data on private school children. Proportionality may be used **only** as a last resort and **only** for the 1995-96 school year.

1. Data from the same source. *An LEA may use poverty data from the same source for both public and private school children, e.g., free and reduced-price lunch data.*
2. Comparable data. *If data from the same source are not available, an LEA may use poverty data for private school children that are from a different source than the data it uses for public school children as long as the income level for both sources is generally the same. For example, the LEA uses free or reduced-price lunch data but private school children do not participate in the free lunch program; however, private school officials are able to provide the LEA a count of children who would be eligible*

for free or reduced-price lunches using other sources of poverty data such as a survey of parents, Aid to Families with Dependent Children (AFDC), or tuition scholarship programs.

Some LEAs conduct a survey that requests comparable data on low-income families whose children attend private schools. The only information necessary for the LEA to include for private school children is (1) address, (2) grade level of each child, (3) size of the family, and (4) the income level of parents. An LEA is not required to have the names of the families.

EXAMPLE:

Surveys yielding good data have some common characteristics. The survey itself is simple and understood by parents, including parents with limited knowledge of English. Letters of explanation are sent to principals and meetings are held with them to explain the necessity and importance of the survey. Principals are encouraged to meet with the parents, then distribute the surveys. After a period of time has lapsed, during which the surveys should have been received, the principals begin to follow-up with those parents who have not returned them. Parents are assured that the completed individual survey forms will be kept in confidence at the private school.

EXAMPLE:

One school district finds that sensitive data, such as income level, are most easily collected when the families providing the data feel that their privacy is being protected. For this reason they use only a numbering system to identify the families, and do not require any names on the form. Each principal is given a copy of the form and instructed to number the forms and keep a log. They inform parents that their names will only be rematched to the numbers if they do not return the form (i.e., in order to contact them). Printed at the bottom of the form is "This form has been numbered to protect your privacy. Once we receive the information requested, any correlation of this number to your family's name will be kept in strict confidence."

3. Extrapolation from a representative sample of actual data. If complete actual data are not available under 1. or 2. above, an LEA may extrapolate the number of low-income private school children from actual data on a representative sample of private school children. The representative sample size should be large enough to reasonably conclude that the poverty estimate is accurate.

Column 1	Column 2	Column 3	Column 4	Column 5
PUBLIC SCHOOL ATTENDANCE AREA	NUMBER OF PRIVATE SCHOOL CHILDREN RESIDING IN EACH ATTENDANCE AREA	NUMBER OF PRIVATE SCHOOL CHILDREN ON RETURNED SURVEYS IN EACH ATTENDANCE AREA (POOR & NON-POOR)	NUMBER OF POOR PRIVATE SCHOOL CHILDREN ON RETURNED SURVEYS IN EACH ATTENDANCE AREA	EXTRAPOLATED NUMBER OF POOR PRIVATE SCHOOL CHILDREN IN EACH ATTENDANCE AREA
A	150	115	100	130
B	20	10	4	8

$$\text{Col. 5 (Extrapolated poor)} = \frac{\text{Col. 2 (Total private in area)}}{\text{Col. 3 (Poor \& Non-poor)}} \times \text{Col. 4 (Poor on survey)}$$

4. Correlation of sources of poverty data. An LEA may obtain the number of poor private school children by correlating sources of data--that is, by determining the proportional relationship between two sources of data on public school children and applying that ratio to a known source of data on private school children. For example, AFDC in public schools is to free and reduced-price lunch in public schools as AFDC in private schools is to X (correlated free and reduced-price lunch in private schools).

$$\frac{\text{AFDC (public)}}{\text{Free and reduced price lunch (public)}} = \frac{\text{AFDC (private)}}{\text{X (private)}}$$

5. Proportionality. If there are no other adequate sources of data available to determine the number of poor private school children residing in each area, an LEA may use

*proportionality--that is, apply the poverty percentage of each participating public school attendance area to the number of private school children who reside in that area to obtain the number of poor private school children residing in each area. The LEA may use proportionality for the 1995-96 school year **ONLY**.*

Allocating Title I Funds

Before allocating Title I funds to participating school attendance areas, an LEA reserves, off the top of its Title I allocation, funds needed, for example, to provide services to children in local institutions for neglected children, to meet the requirements for parental involvement, or to administer Title I programs for public and private school children, including any capital expenses not paid for from funds provided under section 1002(e) of Title I. Then, the LEA allocates funds to public school attendance areas, identified as eligible and selected to participate, in rank order of poverty on the basis of the total number of children--public and private--from low-income families residing in each area. Thus, unlike Chapter 1 under which funds were distributed on the basis of the numbers and needs of the children being served, Title I requires an LEA to allocate funds on the basis of all children from low-income families residing in participating areas. The LEA determines a per-pupil allocation (PPA) for each participating area and distributes that amount for each low-income child--public and private--residing in the area.

Public school attendance area	Column A Per Pupil allocation (PPA) by area	Column B Number of public school low-income children by area	Column C Number of private school low-income children by area	Column D Total allocation for each area [Col. A X (Col. B + C)]	Column E Amount available for services to private school children (Col. A X Col. C)
A	\$800	500	130	\$504,000	\$104,300
B	\$700	300	8	\$215,600	\$ 5,600
C	\$600	200	3	\$121,800	\$ 1,800
D	\$500	400	17	\$208,500	\$ 8,500

To provide equitable services to eligible private school children, the LEA then reserves the amounts generated by poor private school children who reside in participating public school attendance areas. In consultation, the LEA and private school officials choose one, **or a combination of**, the following options for using the funds reserved for private school children:

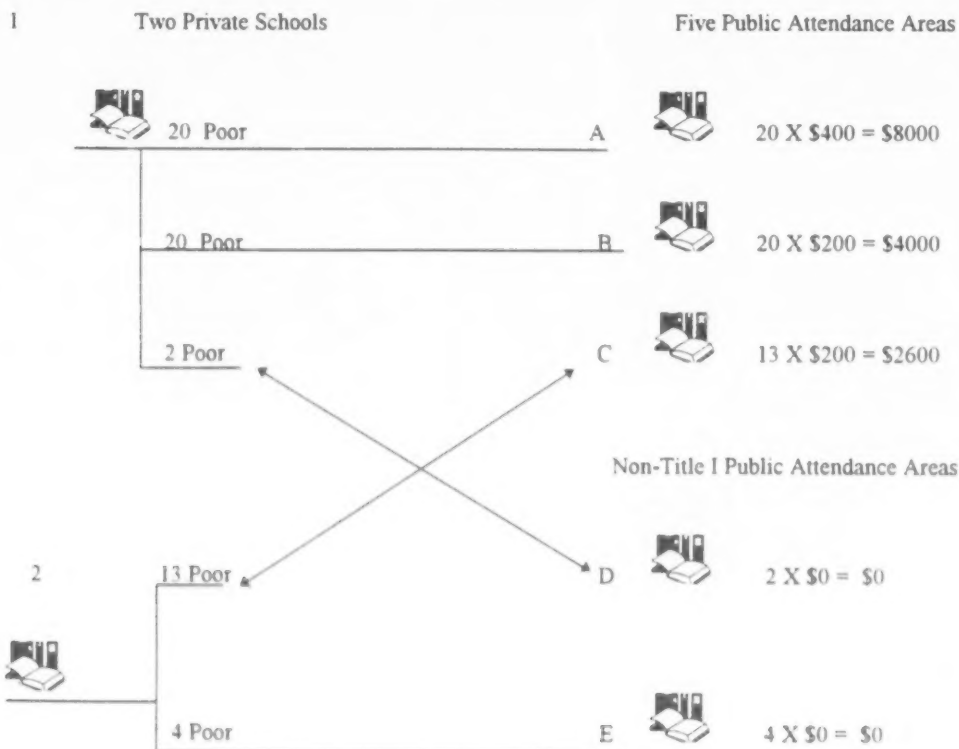
- Provide equitable services to eligible children in each private school with the funds generated by children from low-income families who reside in participating public school attendance areas and who attend that private school.

- Combine the funds generated by low-income private school children in all participating areas to create a pool of funds from which the LEA provides equitable services to eligible private school children, residing in participating public school attendance areas, who are in the greatest educational need of those services. Under this option, the services provided to eligible children in a particular private school are not dependent upon the amount of funds generated by low-income children in the school.

Example

Allocating Instructional Funds For Private School Children

Step 1: Multiply number of Poor Children By Public School PPA



Step 2: In Consultation, Determine Option For Using Funds

Option A Combine Funds Allocated On The Basis Of All Eligible Poor Private School Children For Eligible Educationally Needy Private School Children

Pooling

Private School #1 = \$12,000
 Private School #2 = \$2,600
 Total For Title I Instruction For Eligible Children = \$14,600

Option B Use Funds Allocated On The Basis Of Poor Children Who Attend Individual Private Schools For Eligible Educationally Deprived Children In Each Individual Private School

Private School #1
 20 Low Income Residing in A = \$8,000
 20 Low Income Residing in B = \$4,000
 02 Low Income Residing in D = \$0.000
 Total For Eligible Private School Children In #1 = \$12,000

Private School #2
 13 Low Income Residing in C = \$2,600
 04 Low Income Residing in E = \$0.000
 Total For Eligible Private School Children In #2 = \$2,600

Q1. When an LEA elects not to serve an eligible public school attendance area, as allowed in section 1113(b)(1)(C), what are the procedures under section 1113(b)(2) for serving the private school children who reside in that attendance area?

A. An LEA may elect not to serve ("skip") an eligible attendance area or school that has a higher percentage of children from low-income families if (1) the school meets the comparability requirements, (2) the school is receiving supplemental funds from other State or local sources that are spent according to the requirements of section 1114 or 1115, and (3) the funds expended from such other sources equal or exceed the amount that would be provided under Part A. Services for eligible private school children, however, must be determined without regard to whether any public school attendance areas are skipped.

In implementing this provision, therefore, an LEA must determine which school attendance areas would have received Title I funds absent any skipping and what the per-pupil allocations for those areas would have been. The LEA must then determine the amount of funds that would have been generated by low-income private school children residing in those school attendance areas. This amount is the amount available for serving eligible private school children in the LEA. If the LEA uses non-Title I funds to serve one or more of its higher-ranked school attendance areas, enabling the LEA to use Title I funds to serve additional lower-ranked areas, low-income private school children residing in those additional areas would not generate funds. If, however, the LEA decides under §200.11(a)(2)(ii)(A) of the Title I regulations to pool the funds generated by private school children, the LEA may provide services to eligible private school children residing in all the areas being served as well as in the areas that were skipped.

Q2. How are private school children to be identified as residing in a participating public school attendance area if an LEA is operating under an open enrollment, a desegregation, or a magnet plan?

A. As §200.10(b)(2) of the Title I regulations makes clear, if an LEA identifies a public school as eligible on the basis of enrollment, rather than because it serves an eligible school attendance area, the LEA must, in consultation with private school officials, determine an equitable way to identify eligible private school children. For example, the LEA may assign a private school child to the public school attendance area in which the child resides or to the public school that the child would have attended if not enrolled in a private school. Recognizing that many different enrollment plans exist, the Department is willing to assist an LEA in designing a reasonable approach that will allow for equitable services to be provided.

Q3. How does an LEA reserve funds for administering programs for private school children?

A. Consistent with its plan to enable children served by Title I to reach high standards, an LEA reserves the amount that is reasonable and necessary to administer programs for both public and private school children, including capital expenses needed to provide equitable services to eligible private school students that are not paid for with funds under section 1002(e) of Title I. The reservation for administration is taken "off the top" of the LEA's allocation (not just from the funds available for services to private school students), before funds are allocated to participating attendance areas for instructional services. The costs of administration, including the amount of capital expenses, may need to be adjusted after the LEA determines how many eligible private school children will be served. (See §200.27(c) of the Title I regulations.)

Q4. If an LEA, in consultation with private school officials, decides to pool funds generated by low-income children attending private schools, and later eligible low-achieving children in some schools choose not to participate in Title I programs, do the funds generated by poor children in these private schools remain in the pool?

A. Yes. An LEA allocates Title I funds to participating public school attendance areas using data it has obtained on the number of low-income children, both public and private, who reside in that public school area. Once funds are generated, if eligible low-achieving children in a particular private school do not wish to participate in Title I programs, any funds generated by low-income children in that private school remain in the pool.

EQUITABLE PARTICIPATION

To the extent consistent with the number of eligible children identified in an LEA who are enrolled in private elementary or secondary schools, an LEA shall, after timely and meaningful consultation with appropriate private school officials, provide eligible private school children with Title I services. These services must be equitable in comparison to services and other benefits provided public school participants. The delivery options selected must be in compliance with Aguilar v. Felton, 473 U.S. 402 (1985).

Eligible Children

To be eligible to receive Title I services, a private school child must reside in a participating public school attendance area and must meet the criteria in section 1115(b) of Title I. Under that section, certain children would be eligible by virtue of their status: for example, homeless children and children who in the preceding two years participated in Head Start or Even Start. However, the criterion that a student is failing, or most at risk of failing, to

meet the State's challenging student content and performance standards is, for the majority of private school children, likely to be the criterion against which eligibility for Title I services will be determined.

In consultation with private school officials, an LEA must establish criteria to determine which private school children are eligible and, within the eligible group, which children will be served. To the extent appropriate, the LEA must select private school children who are failing, or most at risk of failing, to meet the State's student content and performance standards. If the LEA, in consultation with private school officials, determines that it is inappropriate to select private school children on the basis of the State's content and student performance standards, the LEA must select private school children who are failing, or most at risk of failing, to meet high levels of achievement comparable to those required by the State's content and performance standards.

As with children attending public schools, Title I funds may not be used to identify those private school children who would be eligible to participate. Title I funds, however, may be used to select participants from those who are eligible and to determine the specific educational needs of participating children.

Once students are selected, the LEA, in consultation with private school officials, determines what Title I services are to be provided. The private school students' needs will determine what Title I services are appropriate and services may be provided in subject areas or grade levels that are different from those provided to public school students. The type of services provided must give reasonable promise that the children will make adequate progress toward achieving the State's challenging student performance standards.

Because eligibility for services is determined by residence in a participating public school attendance area, private school students being served need to reside in an eligible participating public school attendance area. Therefore, if a public middle school attendance area is not participating in Title I, Title I services may not be provided to private school students in middle school grades who reside in that area.

Delivery of Services

In the case of children attending religiously affiliated private schools, several court cases, most notably Aguilar v. Felton, have dealt with the manner in which these children may be served in light of constitutional requirements contained in the First Amendment. Most significant is the prohibition in Aguilar v. Felton against Title I personnel providing instructional services in religiously affiliated schools. Because of this prohibition, an LEA must provide equitable services through alternative delivery methods.

Some of the questions that should be considered when determining what delivery system to use in ensuring the equitable participation of private school children include: Does the system provide an opportunity for private school children to participate in Title I services

that is equitable to the opportunity provided to public school children? How much instructional time is lost going to and from the instructional services? What are the safety factors involved in children going to and from the Title I class?

Delivery options in providing services to participating private school children include, but are not limited to, the following:

- Instruction and services provided at a public school site, other public and privately owned neutral sites, or in mobile vans or portable units.
- Educational radio and television.
- Computer-assisted instruction.
- Extended-day services.
- Home tutoring.
- Take-home computers.
- Interactive technology.

An LEA may provide Title I services directly or through contracts with public and private agencies, organizations, and institutions, as long as those entities are independent of the private school and of any religious organization in the provision of those services.

EXAMPLE:

In Arizona, Navajo private school students receive Title I instruction via distance learning technology--a two-way interactive television, voice and data network. Instruction is provided through an add-on (after school) or limited pull-out model. All instruction is fully interactive, with students and teachers in direct visual and audio contact. The classroom equipment consists of one camera providing the off-site teacher with a view of the entire classroom, a document camera that allows the teacher to review students' work, two television monitors so students can clearly see the off-site teacher, several audio microphones for high quality voice transmission, a fax machine to allow immediate transmission of homework, and a computer modem for other data transmission. Instruction originates from the University of Northern Arizona and is delivered by certified teachers or teachers under the direct supervision of a certified teacher.

- Q5. If a school in the attendance area in which eligible private school students reside is operating a schoolwide program, are private school students to be offered a schoolwide program?**
- A.** No. Because private schools are not eligible for Title I services, schoolwide programs may not be operated in private schools. However, eligible private school children residing in an area served by a schoolwide program school must be offered equitable services.
- Q6. May an LEA provide services to private school children that are not equitable to those provided to public school children, if, after receiving an offer of equitable services, the private school officials or parents choose to have the children participate in only some of the services?**
- A.** The statute requires that an LEA offer equitable services to private school children; it does not require that private school children accept or participate in all those services. If private school officials or parents choose to have their children participate in only some of those services, and decline participation in others, the LEA will have met its responsibility by providing those services in which private school children wish to participate. LEAs should continue to offer equitable services in future years, however, rather than offering only those services in which children participated in the past.
- Q7. When a child residing in a Title I attendance area in one LEA attends a private school in another LEA, which LEA, if any, is responsible for serving the child?**
- A.** The LEA in which the child resides is responsible to provide services for the child. The LEA may, however, arrange to have services provided by another LEA, reimbursing that LEA for costs.
- Q8. May an LEA establish a minimum number of private school children selected for the program in order to establish a Title I program near the private school? If so, what is the LEA's responsibility to serve children attending private schools with fewer than that minimum number?**
- A.** Section 1120(a) of Title I requires that LEAs provide for the participation, on an equitable basis, of eligible children enrolled in private schools. The requirement applies regardless of the number of children attending a private school. However, when the number of eligible children at one location is very small, the cost of establishing certain types of programs to serve them may be prohibitive, especially when these children may be from several grades or have different educational needs. In this case, other options should be considered. For instance, if it is feasible and equitable, LEAs may adopt methods, such as take-home computer programs, individual tutoring programs, or professional development activities with the

classroom teachers of Title I participants that are cost effective to serve small numbers.

- Q9. If the funds generated by low-income private school children are not sufficient to provide instructional services, may the funds be used to provide other services, such as professional development or counseling?
- A. When, in consultation, all involved in the design of the Title I program (public and private school officials and parents) agree that the provision of such services as counseling, staff development, parental involvement or other social services are appropriate to assist those children identified as failing or most at risk of failing to meet the State's content and performance standards, the LEA may provide services other than direct instruction. However, all applicable requirements still must be met, including the requirement that the progress of the private school children toward meeting the State's content and performance standards be measured.

EXAMPLE:

One consortium serving a large rural area, where there are ten small private schools with three to seven Title I children in each school, has developed a program of instruction which incorporates the parents as teachers. The traveling Title I teacher meets with the children once a week for one class period. The parents of the children must commit to meeting with the teacher and participating in staff development/parent involvement seminars as scheduled. Each week the teacher provides the books and materials the parents are to use for the home assignments. For example, "The Baggy Books" (instructional materials for 5 lessons in a bag) is equipped with appropriate instructions for the parent to follow, including questions the parent asks the child about each section of the lesson. There are also suggested activities the parents can do with the child to reinforce math or reading concepts using home situations familiar to the child. Parental assistance is available by contacting the teacher through a "1-800 help line."

SPECIAL CONSIDERATIONS FOLLOWING AGUILAR V. FELTON

- Q10. May Title I personnel go on the premises of religiously affiliated private schools to provide instructional services?
- A. No. In Aguilar v. Felton, the Supreme Court held that Title I personnel may not

provide instructional services on the premises of religiously affiliated private schools. Instructional services for those children must be provided at sites that are neither "physically nor educationally identified with the functions of the private school." See Wolman v. Walter, 433 U.S. 229, 246-47 (1977).

Q11. May Title I personnel enter a religiously affiliated private school in order to escort private school children from their rooms to services held outside the private school and to return them to their rooms?

A. Yes. The provision of escort services where needed is permissible as long as no instruction is occurring as the children are being escorted. Under these circumstances, the duties are noninstructional and are designed merely to protect the health and safety of the children. As noted above, the Supreme Court in Felton only prohibited Title I instructional services on the premises of religiously affiliated private schools. The Court in Wolman and previously in Everson v. Board of Education, 330 U.S. 1, 17-18 (1947), recognized that services related to the health and safety of children are permissible even if provided at religiously affiliated private schools. Therefore, the use of escorts does not raise the entanglement problems at issue in the Felton case.

Q12. Are Title I programs on nonreligious private school premises affected by the Aguilar v. Felton decision?

A. No.

Q13. Does the term "teacher" as used in Aguilar v. Felton include other public school personnel?

A. The Second Circuit opinion affirmed by the Supreme Court in Aguilar v. Felton forbade "the use of federal funds to send public school teachers and other professionals into religious schools to carry on instruction, remedial or otherwise, or to provide clinical and guidance services." However, the Supreme Court in an earlier case, Wolman v. Walter, distinguished the role of the diagnostician from that of the teacher or counselor with regard to services in the private school. We view testing to select children as part of diagnosis; hence, on-premises testing for student selection is not prohibited under Felton.

Q14. May private school students be provided services in public schools or at neutral sites during regular school hours, before or after school, or on weekends?

A. Yes. These options are all available, but the services must be equitable to services provided public school children.

Q15. May private school children receive Title I services in the religiously affiliated

private school before or after regular school hours or on weekends?

A. No.

Q16. May private school children receive services with public school children in a summer school program?

A. Yes, but services must be equitable to those provided public school children. To provide only summer activity for private school children, while serving public school children during both the regular term and summer, generally would not be equitable.

Q17. Where may summer school services be provided?

A. At any site allowable during the regular school year.

Q18. If an LEA provides Title I services to private school children in the public schools, may the LEA charge Title I a reasonable amount for the space used? How are such costs allocated?

A. Yes. Reasonable and necessary costs for public school space used for the instruction of private school students are allowable. Reasonable and necessary costs are those in excess of what the LEA would incur in the absence of Title I. For example, the cost of a classroom in a building already in use would not be an excess cost. Special costs incurred in preparing and maintaining it for occupancy by Title I would be allowable. Any such costs would be considered administrative and would come from the LEA's whole Title I allocation or from capital expense funds--not from funds used to provide instructional services to private school children.

Q19. May a private school child take onto private school premises Title I instructional materials for his or her use as part of the child's Title I program?

A. Yes.

Q20. May a neutral, third-party contractor provide Title I instructional services on the premises of a religiously affiliated private school?

A. No.

Q21. May LEAs use mobile vans or other portable units to provide Title I services to children enrolled in religiously affiliated private schools? If yes, where may an LEA place a mobile or portable unit?

A. Yes. The use of mobile or portable units for the provision of Title I services to private school children is allowable. In deciding where to place a unit, LEAs should

be aware that the Supreme Court has previously held that the Establishment Clause of the First Amendment is not violated when units are located on public property near the private school. See Wolman v. Walter, 433 U.S. 229, 246-47 (1977). Such locations, as well as other locations not owned by the private school or a religious organization, are plainly acceptable sites for mobile or portable units.

The Supreme Court has not ruled on the constitutionality of placing a mobile or portable unit on property belonging to a religiously affiliated private school, and there may be differing views on this subject. It is the view of the Department that, under certain circumstances, mobile or portable units may constitutionally be placed on such private school property. See, e.g., Pulido v. Cavazos, 934 F.2d 912, 922-24 (8th Cir. 1991). The Department believes that the courts would approve delivery of services in locations on private school property that fit the Supreme Court's characterization of the site that it found acceptable in Wolman v. Walter, i.e., a site "neither physically nor educationally identified with the functions of the nonpublic school." While the Court has not held that other locations are constitutionally impermissible, we believe that services at locations fitting this characterization are most likely to withstand judicial scrutiny. The Department believes that one way in which the use of a mobile or portable unit at a given location on the property of a religiously affiliated private school will comport with this standard is if the following conditions are met:

1. The property is at a sufficient distance from the private school building(s) so that the mobile or portable unit is clearly distinguishable from the private school facilities used for regular (non-Title I) instruction.
2. The mobile or portable unit is clearly and separately identified as property of the LEA and is free of religious symbols.
3. The unit and the property upon which it is located are not used for religious purposes or for the private school's educational program.
4. The unit is not used by private school personnel.

In addition to the conditions stated above, an LEA may find that the following two further guidelines may bolster its decision to locate units on the property of a religiously affiliated private school:

1. Before placing a unit on private school property, the LEA can determine that other locations for the services are unsafe, impracticable, or substantially less convenient for the children to be served.

2. The public school district could enter into a lease arrangement with the private school for the use of the land owned by the private school upon which the unit is to be sited.

Q22. What are some examples of property owned by a religiously affiliated private school that would meet the above criteria?

A. Such property might include:

1. Land near the school that is separated from the school by an undeveloped plot of land or other terrain features and that is used neither for religious purposes nor the school's educational program.
2. A portion of a private school playground that is fenced in and has direct access to a public street.
3. Those portions of a parking lot that are not immediately adjacent to the private school.

Q23. May a religiously affiliated private school building be used as a power source for a unit?

A. Yes. There is nothing to prohibit public schools from arranging for power from any source. However, care must be exercised in the placement of the unit to make certain that the unit is separate from the private school building. If the use of the power source results in the need for repair, remodeling, or construction of private school facilities, Title I funds may not be used for such repair, remodeling, or construction. (See §200.13(e) of the Title I regulations.)

Q24. May the LEA pay the private school with Title I funds for the power or for leasing property?

A. Yes. The private school, however, may not charge more than a reasonable amount as determined under local conditions.

Q25. Who is responsible and liable for the safety of private school children during the time they walk or ride to a neutral site to be served by the Title I program?

A. Generally, the LEA is responsible for providing for the transporting of these children to a neutral site. The question of liability, however, would be determined in accordance with State and local laws and would depend on the specific facts of the situation. Any increased cost to the LEA for having liability insurance coverage may be charged as an administrative cost to the Title I program, or to the capital expense grant.

Q26. What can a small rural LEA with a small Title I allocation do to provide equitable services consistent with the Felton decision?

A. Rural LEAs may have special problems because of small allocations and large distances between the private schools and available locations for providing Title I services. The LEAs may wish to consider leasing rather than purchasing equipment, renting a neutral site, or using home-tutoring components to provide equitable services. They may also wish to set up a joint project with neighboring LEAs, and submit a combined application.

Q27. Did Aguilar v. Felton specifically forbid that instructional services be provided to children in institutions for children adjudicated as neglected or delinquent (N or D) operated by religious groups?

A. No. The Court did not address the unique circumstances involved in serving children in N or D institutions.

Capital Expenses

Section 1120(e)(2) provides that an LEA may apply to an SEA for payments for capital expenses incurred to provide equitable services for private school children. For this purpose, "capital expenses" means expenditures for noninstructional goods and services that are incurred as a result of implementing alternative delivery systems to comply with Aguilar v. Felton, including:

- The purchase, lease, or renovation of real and personal property, including mobile or portable educational units and leasing of neutral sites or spaces;
- Insurance and maintenance costs;
- Transportation;
- Other comparable goods and services, which include costs to escort children to and from instructional areas and, in the case of computer-assisted instruction, costs to install equipment and to pay for a noninstructional technician.

Costs of computer equipment are instructional. These costs may not be paid with capital expense funds.

Q28. How may an LEA use capital expense funds?

A. Funds may be used for the following purposes:

1. To pay current capital expense costs, such as transportation or lease costs, to

serve private school children.

2. To pay capital expense costs the LEA will incur to increase the numbers of private school children it will serve. For instance, an LEA has been serving private school children at a nearby public school. However, valuable instructional time is lost in transporting the children by bus and, as a result, many eligible children do not participate. The LEA applies for capital expense funds to lease a portable building to place on vacant land next to the private school in order to increase the number of children who will participate in the program.
3. To reimburse the LEA for capital expense costs incurred in prior years for which it has not been reimbursed, if the LEA demonstrates that its current needs for capital expenses have been met. Assuming the LEA originally paid for these costs "off the top" of its Title I allocation, such a reimbursement of capital expense funds must be used to provide Title I services to both public and private school children.

The State allocates the capital expense funds to LEAs based on the degree of need expressed in the application.

Q29. How must LEAs account for capital expense funds?

- A. Since capital expense funds are appropriated and awarded separately from basic grant funds, they must be accounted for separately. LEAs should treat capital expense funds as a separate program, and account for them in the same manner they account for any other Federal grant funds. The LEA may not take into account capital expense funds in determining the amount of Title I funds reserved for educational services for private school children based on the poverty count of private school children in participating school attendance areas.

EXAMPLE

LEA Part A Allocation \$1,000,000

(Subtract "Off-the-Top" Costs)

Capital Expense (CE) Costs (not covered by CE grant)	-\$ 25,000*
Administrative Costs (Private/Public)	-\$ 125,000
Reserves/Set-Asides	<u>-\$ 50,000</u>

Total for educational services \$ 800,000
(for public and private school children)

In addition to capital expenses not covered by a CE grant (\$25,000), the LEA is receiving a CE grant of \$50,000 for current capital expenses. Therefore, the total capital expenses for implementing the requirements of Felton are \$75,000. The \$25,000 over and above the CE grant must be taken off the top of the allocation.

*CE calculations

Total CE	\$75,000
Less CE Grant	<u>-50,000</u>
CE Costs taken "off the top"	\$25,000

Q30. How does an LEA apply for capital expense funds?

A. Using an application designed by the SEA, LEAs request funds based on the criteria established by the SEA.

Q31. May capital expense funds be used to reimburse an LEA for local or State-funded capital expenses?

A. Capital expense funds may not be used to reimburse expenditures made from State and local funds.

Q32. If an LEA does not receive a capital expense grant or if a third-party contractor is used, must an LEA still take capital expenses off the LEA's whole Title I allocation?

A. Yes.

Q33. When property that was purchased or reimbursed with capital expense funds is sold at market value, must the payment for the property be deposited in the capital expense fund?

A. Yes.

Computer-Assisted Instruction (CAI)

Q34. May Title I funds be used to install necessary electrical wiring in order to operate Title I CAI programs at a private school?

A. Yes. Reasonable installation costs are allowable under certain circumstances. In approving such costs, SEAs must be aware that no Part A funds may be used for repairs, minor remodeling, or construction of private school facilities. Nevertheless, one way in which the installation would be permissible is if:

- The installation is necessary in order for the Title I program to operate;
- The cost is related solely to the CAI program and does not otherwise correct a deficiency in the facility;
- The installation does not result in any improvement to the private school facilities other than the electrical wiring related to the Title I computer(s); and
- The representatives of the private school agree either to reimburse the Title I program for the residual value of the wiring (the installation cost minus depreciation), or to have the LEA remove the wiring if the CAI program is terminated at the site.

Q35. May Title I funds be used to provide a technician in a religiously affiliated private school to operate and maintain CAI equipment and keep order as needed in the CAI Title I classroom?

A. Yes. A technician may be paid from Title I funds to operate and maintain the CAI equipment and keep order, but cannot provide instructional services in the religiously affiliated private school. The Supreme Court in the Felton case prohibited the provision of Title I instructional services in religiously affiliated private schools, but did not rule on the provision of technical, noninstructional services in those schools.

In Wolman v. Walter, the Supreme Court upheld the provision of technical services, such as those of a diagnostician, on the premises of a religiously affiliated private school. The Court found that the nature of that relationship "does not provide the same opportunity for the transmission of sectarian views as attends the relationship between teacher and student or that between counselor and student." 433 U.S. 229, 244 (1977). Thus, the placement of a technician in a CAI Title I classroom does not raise the entanglement problems at issue in the Felton case.

Q36. May equipment be placed on the premises of a religiously affiliated private school to provide CAI under Title I to eligible children enrolled in the school?

A. Yes. CAI equipment may be placed on the premises of a religiously affiliated private school under certain circumstances. We believe that such a placement will withstand judicial scrutiny if the following criteria are met:

1. As with all Title I programs serving private school children, the CAI program must be under the LEA's direction and control. On-site review by public school officials must be limited, however, to such things as the installation, repair, inventory, and maintenance of the equipment.
2. Private school personnel may be present in CAI rooms to perform limited noninstructional functions such as maintaining order, assisting children with equipment operations (such as turning the equipment on and off, demonstrating the use of the computers, and accessing Title I programs), and assisting with the installation, repair, inventory, and maintenance of the equipment.
3. Neither public nor private school personnel may assist the students with instruction in the CAI room. Public school personnel may, however, assist by providing instruction through computer messages, by telephone, or by television.
4. Access to the computer equipment and the rest of the program must be limited to participating Title I children.
5. Equipment purchased with Title I funds may not be used for other than Title I purposes. Only software directly related to the Title I program may be used with CAI.

Q37. Does CAI by itself meet the equitability requirements of Title I?

A. Eligible private school children must receive services that are equitable in comparison to the Title I services provided to public school children in terms of both the quality and the costs of the services. When both public and private school children are receiving the same CAI service, the equitable services requirement of Title I is met.

When CAI is being provided to private school children while public school children are receiving direct instruction from a teacher, the question of equitability is more difficult. This may be especially true in years after the computers were purchased since, after the initial purchase of equipment, CAI normally provides services at a cost less than the typical Title I program. (This problem may not exist, however, if the cost of the equipment is spread out over a number of years. (See the next question.) If CAI alone does not provide services equitable to those being provided public school children, the LEA should offer additional services, such as after-school tutorial sessions or appropriate summer school programs, to make the offer equitable.

Whether the services provided by an LEA to private school students are equitable to those provided to children in public school is measured by factors discussed in §200.11 of the Title I regulations.

- Q38. May the cost of purchasing a computer be spread out over a period of years for the purpose of meeting the equitable costs requirement?**
- A.** The cost of a computer may be spread over a period of years by such means as leasing the equipment, arranging for a lease-purchase agreement, or by paying for the equipment in installments. The LEA may also buy the equipment with local funds, and at the time of purchase agree to have the Title I program proportionately reimburse the local funds each year.

PARENTAL INVOLVEMENT

The statute places considerable emphasis on parental involvement. Section 1118 contains many provisions pertaining to an LEA's responsibilities for carrying out parental involvement activities. If an LEA reserves funds "off the top" of its Title I allocation for carrying out Title I parental involvement activities, the LEA must involve parents of private school participants in those activities. If, instead, the LEA requires its Title I schools to provide parental involvement activities for public school parents from the Title I funds the schools receive, the LEA must provide activities for private school parents from the funds generated for providing services to private school children. Activities for the parents of private school participants must be designed in consultation with private school officials and parents. Furthermore, an LEA has the responsibility for consulting with private school officials and parents of participating private school children to jointly develop a compact between the LEA and parents of private school participants that outlines their shared responsibility for improved student achievement under Title I. A compact between the private school and participating private school children is not required, however. (See "Parental Involvement" guidance.)

PROFESSIONAL DEVELOPMENT

Professional development is another major emphasis in Title I. Section 1119 contains provisions for required professional development activities. Many other sections of Title I also include references to professional development.

Private school officials and staff who work directly with private school children who participate in Title I may be included in professional development activities. In addition, parents of private school participants may participate in professional development activities if appropriate. Public school teachers who provide Title I services to private school children must be provided professional development, if needed. (See "Professional Development" guidance.)

STANDARDS, ASSESSMENT, AND PROGRAM IMPROVEMENT

In consultation with private school officials, an LEA must provide participating private school children an equitable opportunity to meet the State's content and student performance standards. In some instances, however, it may not be appropriate to expect private school children to meet the State's standards--for example, if those standards are not aligned with the curriculum of the private school. If the LEA, in consultation with private school officials, determines that it would be inappropriate to measure the achievement of participating private school children in relation to the State's content and performance standards, the LEA must develop alternative standards that provide reasonable promise of those children achieving the high levels called for by the State's student performance standards.

An LEA must assess annually the progress of the Title I program toward enabling private school Title I participants to meet the State's challenging student performance standards (or the LEA's alternative standards). Generally, an LEA must assess the progress of the Title I program using the State's definition of adequate yearly progress. However, the LEA may need to modify that definition, in consultation with private school officials, to better measure the progress for participating private school children. In measuring adequate yearly progress, the LEA has the flexibility to group children in a manner that will provide the most accurate information of this progress. For example, the LEA may decide to group children by the type of instructional method, grade level, school, or other appropriate basis.

In general, an LEA must use the State assessment system (i.e., the final assessment required under section 1111(b)(3) of Title I or the transitional assessment under section 1111(b)(7)) as well as any additional measures or indicators the LEA deems necessary to measure how well the Title I program is enabling the private school students to meet the State's challenging student performance standards. In some instances, however, it may not be appropriate for the LEA to use the State assessment system. If the LEA, in consultation with private school officials, determines that the State assessment would not provide accurate information about

the progress of participating private school children, the LEA may use other assessment measures that more accurately reflect the progress of those children toward meeting the State's standards.

If an LEA determines that the Title I program serving private school children has not made adequate progress (or met the criteria established by the State for transitional assessments) for two consecutive school years, the LEA must develop a program improvement plan that has the greatest likelihood of improving the performance of participating children in meeting the State's student performance standards.

Q39. In what subjects does an LEA assess private school children?

- A. An LEA normally would assess private school children in the subjects in which the LEA provides Title I services to those children.

Q40. May Title I funds be used to assess private school children?

- A. Title I funds may be used to assess private school children if the assessment is being used only for Title I purposes. To the extent, however, that an assessment is conducted for other purposes, it may not be paid for from Title I funds. For example, if private school children, in general, are included in the State assessment, Title I funds may not be used to pay for the assessment of those private school children participating in Title I.

BYPASS

If an LEA is prohibited by law from providing for the participation on an equitable basis of eligible children enrolled in private elementary and secondary schools or if the Secretary determines that an LEA has substantially failed or is unwilling to provide for such participation, the Secretary waives the requirements for the LEA to serve private school children and arranges for the provision of such services. The Secretary informs the LEA and SEA that a bypass will be invoked. [The specific steps are found in section 14506 of the ESEA]

To implement a bypass, funds are deducted from the LEA's Title I allocation. In computing the amount to be deducted, administrative costs for serving private school children and capital expenses are included in the amount deducted from the allocation. Funds for educational services are generated on the basis of the number of low-income private school children residing in participating public school attendance areas. The Department ensures that services are provided in a cost-effective manner.

USES OF FUNDS



USES OF FUNDS

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USES OF FUNDS

USES OF FUNDS

The purpose of Title I, Part A funds is to enable schools to provide opportunities for children served to acquire the knowledge and skills contained in the challenging State content standards and to meet the challenging State performance standards developed for all children. The law provides many flexibilities and opportunities for LEAs and schools to meet the purpose of Part A. In schoolwide program schools, an LEA may use Part A funds for any activities that are part of the schoolwide program plan. In targeted assistance schools, however, Part A funds may only be used to meet the needs of participating children. Below is guidance on specific uses of Part A funds. This is not an exhaustive list of allowable Part A costs.

- Q1. May Part A funds be used to pay for employee benefits such as pension plans, unemployment insurance coverage, health insurance, severance pay, and life insurance?**
- A. Yes. Employers' contributions for employee benefits such as these are an allowable use of Part A funds provided the benefits are granted under approved plans and the costs are distributed equitably to the Part A grant and to other activities.
- Q2. May Part A funds be used to pay the salary costs for employees during periods of authorized absences such as annual leave, sick leave, and sabbatical leave?**
- A. Yes. Employee benefits in the form of compensation paid during reasonable authorized absences from the job are an allowable use of Part A funds if the benefits are provided under an established leave system and the costs are equitably allocated to all related activities, including the Part A program.
- Q3. What records are necessary to support the salary costs charged to Part A funds for an employee who works on Part A duties but also has other program responsibilities?**
- A. If the State applies Part 80 of EDGAR, which incorporates the cost principles in Office of Management and Budget (OMB) Circular A-87, the grantee must maintain appropriate time distribution records. If the State applies its own procedure rather than the procedures in 34 CFR Part 80, the method used must produce an equitable distribution of time and effort. Records must be retained for three years. **(A copy of OMB Circular A-87, which contains standards regarding time distribution, is provided at the end of this chapter.)**
- Q4. May Part A funds be used to pay the cost of renting or leasing privately owned facilities for instructional purposes or office space?**
- A. The cost to rent or lease space in privately owned buildings is allowable if the space is necessary for the success of the program and space in publicly owned buildings is not

available to the grantee.

Q5. Are maintenance and operation costs such as janitorial services and utility costs allowable charges?

- A. Maintenance and operation costs are allowable charges to Part A to the extent that the costs are not otherwise included in rent or other charges for space, are reasonable and necessary for the success of the program, and are distributed on an equitable basis.

Q6. May Part A be used to construct or acquire real property?

- A. No. The Title I statute does not authorize the use of Part A funds for construction or acquisition of real property.

Q7. Does this mean that Part A funds may not be used to buy mobile vans or install wiring for vans or computers?

- A. No. These are permissible uses of Part A funds. A mobile van is a piece of equipment, not real property. Items such as wiring for example, that make a van operational are part of the equipment.

Q8. May Part A funds be use to provide training/professional development for instructional and pupil services personnel not paid with Part A funds?

- A. The cost of training personnel not paid with Part A funds is an allowable charge if the training is specifically related to the Part A program and designed to meet the specific educational needs of Part A participants and supplements, rather than supplants, State and local training.

Q9. May equipment be purchased with Part A funds?

- A. Yes. An LEA, however, must determine that (1) the equipment is reasonable and necessary to effectively operate its Part A programs; (2) existing equipment will not be sufficient; and 3) the costs are reasonable.

Q10. May Part A funds be used to pay the interest on lease purchase agreements for the purchase of, for example, computer equipment?

- A. Yes, in accordance with the cost principles in OMB Circular A-87 included below.

Financing costs (including interest) paid or incurred on or after July 1, 1995 (for Part A) associated with otherwise allowable costs of equipment is allowable subject to the conditions in (1)-(4).

(1) The financing is provided (from other than tax or user fee sources) by a bona fide third party external to the governmental unit.

(2) The assets are used in support of Federal awards.

(3) Earnings on debt service reserve funds or interest earned on borrowed funds pending payment of the construction or acquisition costs are used to offset the current period's cost or the capitalized interest, as appropriate. Earnings subject to being reported to the Federal Internal Revenue Service under arbitrage requirements are excludable.

Q11. What procedures govern disposition of equipment purchased with Part A funds?

A. A State's procedures concerning disposition of equipment govern the disposition of Part A equipment. Section 80.32(b) of EDGAR requires that a State will dispose of equipment "in accordance with State laws and procedures." However, the State may follow as its State procedures the disposition provisions in §80.32(e) of EDGAR.

Q12. When an LEA recovers funds from the sale of equipment or real property purchased with Part A funds, may these funds be retained by the LEA or school?

A. A State's procedures govern the disposition of Part A equipment and real property. If a State has decided to apply the provisions in §80.32(e) of EDGAR as its State procedures, an LEA may retain, sell, or otherwise dispose of equipment with a current per unit fair-market value of less than \$5,000 with no further obligation to the Federal government. If the equipment has a per unit value of more than \$5,000, §80.32(e)(2) requires the LEA to compensate the Federal Government. Similarly, §80.31(c) requires an LEA to compensate the Federal Government if it disposes of real property purchased in whole or in part with Chapter 1 or Title I, Part A funds.

A State may also adopt other procedures for disposing of Part A equipment and property. For example, a State may establish a threshold lower than the \$5,000 amount established in §80.32(e). In addition, instead of returning the proceeds to the Federal Government under §§80.31(c) and 80.32(e)(2), a State may permit LEAs to expend those proceeds in the Part A program.

Q13. What happens to equipment purchased with Part A funds when it is no longer needed for Part A activities?

A. An LEA must dispose of unneeded Part A equipment in accordance with State law and procedures. If a State is following EDGAR, §80.32(c)(1) provides that when equipment is no longer needed for its original purpose, it may be used for activities currently or previously funded by other Federal programs. If a State's procedures permit, an LEA could also use the equipment for activities funded from non-Federal sources.

Q14. What options does an LEA have to make maximum use of equipment purchased, in whole or in part, with Part A funds?

- A. An LEA has several options to increase flexibility in using Part A equipment. When an LEA purchases equipment with Part A funds, for example, it may share the cost with other Federal, State, or local programs that will also make use of the equipment on a proportional basis. Likewise, an LEA that wishes to use Part A equipment in non-Part A activities may pay a reasonable user fee to the Title I program for the portion of time the equipment is used in non-Part A activities. Further, an LEA may use Part A equipment in non-Part A activities without paying a user fee or sharing costs in accordance with the standards described in Q15. below. Additionally, an LEA may take into consideration when it decides its equipment needs under Part A whether other equipment--e.g., LEA-funded adult education equipment used at night--would be available for Part A use during the day.

Q15. Are there circumstances under which Part A equipment may be used in non-Part A activities without paying a user fee or sharing costs?

- A. Yes, subject to the standards described below. Any equipment purchased with Part A funds must be reasonable and necessary to implement a properly designed program for Part A participants. The Department recognizes, however, that under some circumstances, equipment purchased as part of a properly designed Part A program may, without constituting an improper expenditure, be used on a less than full-time basis. If that equipment could be made available for other educational uses without interfering with its use in the Part A program or significantly shortening its useful life, the Department would have no objection to the non-Part A use, given the fact that it would otherwise be idle.

This guidance is consistent with 34 CFR 80.32(c), which allows equipment to be made available for use on other projects or programs currently or previously supported by the Federal Government, "providing such use will not interfere with the work on the projects or programs for which it was originally acquired." This guidance is also consistent with parallel flexibility afforded to institutions of higher education, hospitals, and nonprofit organizations in 34 CFR 74.137, which permits shared use of equipment purchased with Federal funds in non-Federally funded, as well as Federally funded, projects. Because a State may adopt its own procedures for use of Part A equipment, it could adopt the flexibility in §§80.32(c) or 74.137. The guidance set forth below assists in ensuring that limited use of Part A equipment in non-Part A activities does not interfere with the Part A program and is consistent with the Part A statute and regulations.

An LEA that decides to use Part A equipment in non-Part A activities on a part-time basis must do so in a manner that protects the integrity of the equipment as a Part A expenditure. Accordingly, the LEA must ensure and document that the Part A equipment is part of a Part A program that has been properly designed to meet Part A participants'

needs; that the equipment purchased with Part A funds is reasonable and necessary to operate the LEA's programs, without regard to any use in non-Part A activities; that the program has been designed to make maximum appropriate use of the equipment for Part A purposes; and that the use of the equipment in non-Part A activities does not decrease the quality or effectiveness of the Part A services provided to Part A children with the equipment, increase the cost of using the equipment for providing those services, or result in the exclusion of Part A children who otherwise would have been able to use the equipment.

LEAs should be judicious in applying these standards. The Secretary will presume, absent actual evidence to the contrary, that the standards have been met and that use of Part A equipment in non-Part A activities is proper if that use does not exceed 10 percent of the time the equipment is used in Part A activities. However, use above that amount in non-Part A activities is not necessarily improper if the standards are met on a case-by-case basis.

The following examples illustrate some situations in which Part A equipment may be used in non-Part A activities:

- (1) Computers purchased with Part A funds are used full-time during the school day but are idle during evening hours and would be beneficial to adult education classes that meet twice a week. The use in the adult education classes would not be extensive and, therefore, would not significantly shorten the useful life of the equipment. Under these circumstances, the Part A computers may be used for the adult education classes.
- (2) Part A computers that are part of a properly designed Part A program are being used full-time except for one period each school day. The proper amount of computer equipment was purchased for the Part A program and the Part A program cannot be redesigned effectively to use the computers in every period. Under these circumstances, the Part A computers may be used, for example, for State or locally funded supplemental education activities during the period they are idle.
- (3) Ten listening centers were purchased with Part A funds are used regularly but not continuously in the Part A program. The Part A program cannot be designed effectively to use the centers more frequently. The listening centers are used in an extracurricular foreign language program for periods of time averaging 10 percent of the time devoted to Part A. If the useful life of the centers is not significantly reduced, the centers may be used in this manner.

Q16. May Part A funds be used to pay for travel and conference costs?

- A.** The costs for staff travel and conferences are allowable if the travel and conferences are

specifically related to the Part A program and not to the general needs of the LEA or school and are reasonable and necessary.

Q17. May Part A funds be spent for food and refreshments provided during parent meetings or training?

- A. Reasonable expenditures for refreshments of food, particularly when such sessions extend through mealtime, are allowable.

Q18. May Part A funds be used to purchase insurance for vehicles used to transport school personnel for home visits or parents for school visits?

- A. Yes. However, the allowable portion of the cost should be calculated on the basis of the percentage of time the vehicle is used for Part A and home visits.

Q19. May parents be paid to attend meetings?

- A. No. The statute does not authorize an LEA to pay a parent to attend a meeting or training session or to reimburse a parent for salary lost due to attendance at Part A parental involvement activities. Parental involvement expenditures are limited to costs that a parent may incur to participate, such as babysitting fees.

Q20. The ESEA contains Title XI entitled "Coordinated Services." May Part A funds be used as part of a coordinated services projects?

- A. Title XI of the ESEA offers an LEA on its own behalf or on behalf of one or more of its schools (or individual schools or group of schools if there is no governing LEA) an opportunity to use up to 5 percent of the ESEA funds it receives to develop, implement, or expand a coordinated services project. The statute defines a "coordinated services project" as "a comprehensive approach to meeting the educational, health, social service, and other needs of children and their families, including foster children and their foster families, through a community-wide partnership that links public and private agencies providing such services or access to such services through a coordination site at or near a school." The Department has issued preliminary guidance for Coordinated Services Projects. To obtain a copy, please call (202)260-0826.

federal register

Wednesday
May 17, 1995

Part II

Office of Management and Budget

Cost Principles for State, Local and
Indian Tribal Governments (Circular A-
87); Notice

OFFICE OF MANAGEMENT AND BUDGET

Cost Principles for State, Local and Indian Tribal Governments

AGENCY: Office of Management and Budget

ACTION: Final Revision to OMB Circular A-87, "Cost Principles for State, Local and Indian Tribal Governments"

SUMMARY: An interagency task force was established to review existing cost principles for Federal awards to State and local governments. The task force studied Inspector General reports and recommendations, solicited suggestions for changes to the Circular from State and local governments, and compared for consistency the provisions of other Office of Management and Budget cost principles covering non-profit organizations and universities. Proposed revisions reflecting the results of those efforts were published on October 12, 1988 (53 FR 40352-40367) and August 19, 1993 (58 FR 44212-44234). The extensive comments received on these proposed revisions, discussions with interested groups, and other related developments were considered in developing this final revision.

DATES: Agencies shall issue codified regulations to implement the provisions of this Circular by September 1, 1995.

ADDRESSES: Office of Management and Budget, Office of Federal Financial Management, Financial Standards and Reporting Branch, Room 6023, New Executive Office Building, Washington, DC 20503. For a copy of the revised Circular, contact Office of Administration, Publications Office, Room 2200, New Executive Office Building, Washington, DC 20503, or telephone (202)395-7332.

FOR FURTHER INFORMATION CONTACT: Non-Federal organizations should contact the organization's cognizant Federal funding agency. Federal agencies should contact Gilbert H. Tran, Financial Standards and Reporting Branch, Office of Federal Financial Management, Office of Management and Budget, telephone: (202)395-3993.

SUPPLEMENTARY INFORMATION:

A. Background

The Office of Management and Budget (OMB) received about 200 comments from governmental units, Federal agencies, professional organizations and others in response to the Federal Register notice of August 19, 1993 (58 FR 44212). All comments were considered in developing this final revision.

OMB also considered the National Performance Review's recommendations to reduce paperwork and red tape. Changes were made to the Circular to streamline the cost negotiation process and defer to State and local accounting procedures whenever possible. Also, the policy guides in the Circular were amended to provide that Federal agencies should work with States or localities which wish to test alternative mechanisms for paying costs for administering Federal programs.

Section B presents a summary of the major public comments grouped by subject and a response to each comment. Other changes have been made to increase clarity and readability. Section C addresses procurement issues. Section D discusses the Federal Acquisition Streamlining Act of 1994.

B. Public Comments and Responses Basic Circular

Comment: The policy subsection states that "no provision for profit or increment above allowable cost is intended." This statement is currently contained in the Circular, but it is different from that contained in other OMB cost principles circulars and is literally incorrect. This seems to say no profit or increment above cost is permitted.

Response: This sentence was changed to conform with the other OMB cost principles circulars. There is no policy change intended by this change.

General Principles for Determining Allowable Costs—Attachment A

Comment: The requirement in the basic guidelines that "a cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to a Federal award as an indirect cost" appears to be too expansive and should be clarified.

Response: There is no policy change intended from that in the existing Circular. The wording in the consistency provision was changed to make it clear that all costs incurred for the same purpose in like circumstances are either direct costs only or indirect costs only with respect to final cost objectives (e.g., grants). No final cost objective shall have allocated to it as an indirect cost any cost if other costs incurred for the same purpose, in like circumstances, have been included as a direct cost of that or any other final cost objective. For example, a grantee normally allocates all travel as an indirect cost. For purposes of a new grant proposal, the grantee intends to allocate the travel costs of personnel

whose time is accounted for as direct labor directly to the grant. Since travel costs of personnel whose time is accounted for as direct labor working on other grants are costs which are incurred for the same purpose, these costs may no longer be included within indirect cost pools for purposes of allocation to any other grant.

Comment: The Circular lists the market price of comparable goods or services as one test of reasonableness. This statement may cause problems for State agencies that are required to make purchases from State-wide contracts.

Response: OMB recognizes that market fluctuations may result in a State paying higher prices on State-wide contracts. However, significant differences between State prices and market prices should be analyzed. For example, Federal awards should not be paying higher prices for State awards based on geographical preferences.

Comment: The prohibition against shifting costs allocable to a particular Federal award or other cost objective to other Federal awards needs to be clarified. Governmental units should not be precluded from shifting allowable cost in accordance with program agreements.

Response: This section was expanded to recognize that there are instances when it may be appropriate for governmental units to transfer costs from one cost objective to another cost objective.

Comment: It is not logical to require governmental units to allocate indirect costs to all activities including donated services.

Response: The Circular is designed to provide that Federal awards bear their fair share of costs. If non-Federal activities use donated services that require a substantial amount of support costs, it would be inequitable to charge these costs to Federal awards.

Comment: The section on applicable credits needs to be clarified.

Response: The language in this section has been revised to remove inappropriate examples of applicable credits and references to program income which are covered by the grants management common rule.

Selected Items of Cost—Attachment B Advertising and Public Relations Costs

Comment: Clarify the allowability of certain public relations type costs, such as job fairs and activities to promote membership on public transportation.

Response: The allowability of these types of costs depends upon the circumstances surrounding the individual case, in determining whether

Federal awards should participate in these types of costs, the recipient should consider how similar types of costs are charged, and whether there is a direct benefit to Federal awards resulting from these costs.

Audit Services

Comment: The Circular limits the allowability of audit costs to single audits and does not provide reimbursement for audits of a less comprehensive nature.

Response: This section was revised to allow the costs of other audits.

Automatic Electronic Data Processing

Comment: The requirement for governmental units to amortize the costs associated with the development and testing of automated systems would impose an unreasonable financial and administrative burden on the governmental units.

Response: OMB eliminated the requirement for governmental units to amortize the costs of developing and testing automated systems until a uniform Federal policy covering all types of recipients of Federal awards can be developed.

Compensation for Personnel Services

Comment: The potential paperwork burdens associated with accounting for employee leave payments and accruals could be substantial.

Response: This section was simplified by modifying many of the prescriptive accounting rules for leave.

Comment: Interest cost associated with pension contributions should be allowed if the governmental unit's contributions are delayed.

Response: References to interest payments were deleted. However, language was inserted into the Circular to make it clear that Federal reimbursement of pension cost must be adjusted when the governmental unit's payments to the fund are late. The adjustment should compensate for the additional cost because of the timing of the charges to the Federal Government and the governmental unit's contribution to the pension fund.

Comment: Governmental units should not be required to use separate cost allocation procedures for classes of employees that experience different actuarial gains and losses (e.g., police and fire departments).

Response: This requirement was deleted from the Circular.

Comment: The requirement that a governmental unit obtain Federal approval for changing its method for determining pension and post-

retirement health benefit costs should be deleted.

Response: This requirement was deleted. Pension costs and post-retirement health benefit costs determined in accordance with Generally Accepted Accounting Principles (GAAP) and the provisions of the Circular will be allowable. For contracts covered under Cost Accounting Standards (CAS), CAS 412 and 413 promulgated by the Cost Accounting Standards Board shall establish the allocability of pension costs.

Comment: The current principles applicable to support of personnel costs have worked well and require no change.

Response: OMB believes additional guidance is necessary. Federal agencies have found that the absence of sufficient guidance on documentation to support salaries charged to Federal awards has caused numerous audit findings and resulted in endless wasted hours of negotiation between Federal agencies and governmental units. Based on the comments received, OMB made a number of changes to the requirements in this section of the Circular to clarify and simplify Federal requirements for documenting salaries charged to Federal awards.

Defense and Prosecution of Criminal and Civil Proceedings, and Claims

Comment: OMB proposed to substantially amend the provisions on the allowability of legal and related expenses. In the 1981 version of the Circular, this provision is found at Attachment B, section 16 (46 FR 9552). In the latest proposal, the proposed revisions were at Attachment B, section 14 (56 FR 44222).

State and local governments contended that the proposed revisions on the allowability of legal and related expenses would be unfair and would deny them due process.

State and local governments also objected to the specific proposed revisions dealing with legal proceedings based on the Major Fraud Act and the Federal Acquisition Regulation (48 CFR 31.205-47) in Attachment B, sections 14.a. through f. State and local governments contended that those provisions are ambiguous, inconsistent and overly broad. In addition, these commenters argued that the provisions were designed for commercial contractors and should not be applied to grants.

Response: After reviewing the comments on the proposed revisions, OMB decided not to amend the current provision on the allowability of legal

and related expenses. In the revised Circular, this provision is now found at section 14.b.

In this revision, OMB has added a provision at section 14.a. This provision, which was in the proposal, simply restates the currently-applicable, statutory restrictions in 10 U.S.C. 2324(k).

Depreciation and Use Allowances

Comment: It is unclear if a use charge can be charged while an asset is in service.

Response: The Circular now provides that a reasonable use allowance may be negotiated for fully depreciated assets; therefore, OMB believes a reasonable use allowance could be negotiated for an asset for as long as the asset is in service.

Comment: It is not clear whether accelerated depreciation is allowed.

Response: The preferred method of depreciation is the straight line method. However, other methods may be used when there is evidence that an asset will be used up faster in the earlier portion of its useful life.

Comment: The estimated useful lives of equipment and buildings used to compute use allowances should be shortened.

Response: No changes were made. Governmental units have the option of claiming depreciation which is usually based on the actual life of the asset.

Comment: It is not clear why classes of assets needed to be determined on a State-wide, local-wide, or Tribal-wide basis.

Response: This section was amended to say classes of assets shall be determined on the same bases used for the governmental unit's financial statements.

Equipment and Other Capital Expenditures

Comment: The capitalization level for equipment seems to be arbitrarily low. The criterion of \$25,000, which is recognized by the Department of Health and Human Services (HHS), might be more appropriate.

Response: The \$5000 criterion is in line with capitalization levels used by government contractors and others. The HHS criterion is limited to equipment used on a few very large programs where equipment purchases are a very small percentage of total program costs. For CAS-covered contracts subject to "full coverage", the threshold for equipment is \$1500 as established under CAS 404.

Comment: Clarify the term "article" as used in the definition of equipment. The Circular defines equipment "as

being an article of nonexpendable property."

Response: The definition of "capital expenditure" was added to further define the term "equipment." However, if further guidance is needed in this area, governmental units should follow their own accounting practices when defining equipment.

Comment: It is not clear what is meant by "The total acquisition costs are not allowable as indirect costs during the period acquired."

Response: This section was clarified. It now says that capital expenditures which are not authorized to be charged directly to an award may be recovered through use allowances or depreciation.

Comment: The impact of depreciation as proposed in the Circular would shift costs to the governmental unit, not make any provision for the time value of money, increase administrative costs to track resulting depreciation schedules, and erode the partner relationship between Federal agencies and governmental units.

Response: The accounting treatment for depreciation as prescribed by the Circular is based on GAAP. Further, the provisions ensure that the Federal Government pays its fair share of costs, including interest on financing.

Fund Raising and Investment Management Costs

Comment: It is not clear whether costs related to raising funds from employees within an organization for charitable activities, such as the United Way, would be allowable since the Circular disallows fund raising costs.

Response: Generally, the prohibition on fund raising activities covered by the Circular is for those activities where the governmental unit raises funds for its own use. Incidental fund raising from an organization's own employees for charitable organizations, such as the United Way, is considered part of normal operating expenses and, therefore, allowable.

Gains and Losses on Disposition of Depreciable Property and Other Capital Assets and Substantial Relocation of Federal Programs

Comment: The provisions which would require governmental units to reimburse the Federal Government when Federal awards were relocated from facilities where the Federal Government participated in the financing is inappropriate.

Response: This section was amended. It now requires governmental units to obtain prior approval from the cognizant agency for substantial relocations of Federal awards from buildings for

which the Federal Government participated in the financing.

Insurance and Indemnification

Comment: It is not apparent why provisions for liabilities, which do not become payable for more than one year after a self insurance provision is made, are limited to the discounted value of the liability.

Response: This requirement is designed to cover only those cases where the amount of the liability is firm or reasonably certain. This provision helps to avoid excessive reserve balances for the current fiscal year. It limits current year premiums to the present value of the future (known or reasonably certain) liability. When that future liability becomes due, prior years premiums plus earnings (i.e., interest or investment income) from those premiums will be available to satisfy that debt.

Comment: The Circular states that self-insurance reserves must be based on sound actuarial principles using the most likely assumptions. This seems to be an attempt to limit sound actuarial principles.

Response: This language was not intended to restrict sound actuarial principles. The language was changed to clarify that sound actuarial assumptions should recognize actual past, as well as probable future, events when determining premiums and reserve levels.

Interest

Comment: Interest expense should be allowable not only for building modifications, as provided in the 1981 revision of Circular A-87, but also for acquisitions of equipment made prior to the issuance date of the revised Circular. The proposed provision is objectionable because it would require dual records and impose an unreasonable and unnecessary administrative burden on State and local governments.

Response: The provision was rewritten to allow interest expense paid or incurred on or after the revised Circular's effective date to be charged to Federal awards for existing as well as newly-acquired equipment.

Historically, OMB has not allowed interest on debt issued prior to the effective date of an interest policy revision (pre-revision debt). In 1980, OMB allowed State and local governments interest on debt issued to acquire buildings, but not on pre-revision debt (45 FR 27363). In 1982, in a revision to Circular A-21, "Cost Principles for Educational Institutions," OMB allowed interest on debt issued to acquire buildings and equipment, but

not on pre-revision debt (47 FR 33658). In 1994, in a proposed revision to Circular A-122, "Cost Principles for Non-Profit Organizations," OMB proposed to allow interest debt issued to acquire buildings and equipment, but not on pre-revision debt (59 FR 49091).

In view of the fact that pre-revision debt was incurred with full knowledge of the cost policy that was in effect at that time, OMB does not believe that grantees should expect the Federal Government to allow interest on this debt without such a decision being cost-justified from the Federal Government's perspective. OMB believes the Federal Government should only allow interest on pre-revision debt when the cost of maintaining dual records on pre-revision and post-revision assets and related debt (all or a portion of these recordkeeping costs are chargeable to the Federal programs as administrative costs) is less than the interest cost on pre-revision debt.

With respect to debt incurred to purchase buildings, OMB believes that the cost of maintaining dual records is cost-justified in view of the limited number of buildings and debt issues for which separate records would have to be maintained, and the substantial interest cost associated with long term debt used to finance buildings. Thus, as OMB has previously explained, "[a]pplying the new rules to old buildings would appear to provide a windfall recovery, and might drive up overhead costs of federally assisted programs" (47 FR 33658, also see 45 FR 27363).

Equipment acquired by State and local governments (except computers), while substantial in terms of the number of pieces, is relatively nominal in cost and has a relatively short life span. As a result, the outstanding interest on debt issued to finance this equipment is relatively nominal. Moreover, State and local governments would still bear the major share of the financing costs, even if pre-revision debt were allowable. By contrast, the cost of maintaining dual records for a large number of items and related debt would likely be substantial. Given the different balance between administrative and interest costs, OMB has decided that, in this instance, the administrative costs associated with maintaining separate records to track pre-revision and post-revision debt is not cost-justifiable from the Federal Government's perspective.

The basis for the allowance of pre-revision debt for equipment of State and local governments is consistent with the basis for OMB's treatment of such debt for educational institutions (in 1982) and OMB's proposed treatment of such

debt for non-profit organizations (in 1994). The cost of equipment acquired by educational institutions and non-profit organizations through debt financing can be significant (e.g., over \$650,000 for x-ray crystallography equipment, \$348,000 for a vantage flow cytometer for high speed cell analysis, and \$265,000 for an electron microscope). Equipment of this type and related debt has a longer life, and in turn, significantly higher interest cost. Moreover, as with buildings, there are only a limited number of pieces of such equipment, which reduces the administrative costs of dual records. Given the amount of interest involved in the financing of these assets compared with the relatively nominal administrative burden associated with maintaining dual records, OMB believes the cost of maintaining dual records is justifiable.

Comment: The requirement for a governmental unit to document, as part of its decisionmaking process, that capital leasing is the most economical option does not belong in Circular A-87.

Response: The requirement for lease analysis as part of the governmental unit's decisionmaking process and its proper documentation is addressed in the Grants Management Common Rule under Section 36(b)(4). This requirement is not addressed in Circular A-87.

Comment: Governmental units would not recover their full costs because of provisions in the Circular which provide that a credit is due the Federal Government when Federal payments for interest, depreciation, use charges and other contributions for building use exceed the interest and principal payments made by the government (positive cash flow).

Response: OMB deleted the provisions in the Circular which would require credits under the conditions described above. However, governmental units will be required to negotiate the amount of allowable interest whenever cash payments (interest, use allowances, depreciation and contributions) exceed governmental unit cash payments and other governmental unit contributions. OMB will study this matter further to ensure fair and equitable policies are established for the States and the Federal Government.

Memberships, Subscriptions, and Professional Activities

Comment: Membership costs in some civic and community organizations should be allowable when the purpose

is to promote services provided by the Federal award.

Response: The language has been revised to allow memberships in civic and community organizations as a direct cost with the prior approval of the Federal awarding agency.

Professional Service Costs

Comment: Simplify the section on professional service costs by eliminating the factors to consider in determining the allowability of professional service costs.

Response: Eight subsections listing the factors were deleted.

Proposal Costs

Comment: It is not clear why proposal costs should normally be treated as indirect costs and allocated to all activities. Such costs should be treated as direct costs if they can be identified with a specific award.

Response: OMB added a provision to allow governmental units to charge proposal costs directly to a Federal award with the prior approval of the Federal awarding agency.

Taxes

Comment: If OMB adopts the proposed revision affecting sales tax reimbursement, the revision should become effective at some later date to allow time to change State and local laws.

Response: OMB agrees that there should be a phase-in period. The Circular allows governmental units three years to phase-in the change.

Comment: If the sales tax proposal were adopted, it would become a burden to separately account for State sales taxes paid on Federal grant purchases.

Response: The Circular allows reasonable approximations to be used where the identification of the actual amount of unallowed taxes would require an inordinate amount of effort.

Comment: State sales taxes should be allowable when a governmental unit is in a position that makes exclusion administratively impossible, i.e., when employees in travel status must pay sales taxes upon receipt of goods and services.

Response: States should attempt a reasonable approximation.

Comment: Some State and local governments and Indian Tribal governments would lose substantial amounts of revenue if sales taxes were not chargeable to purchases made in connection with federally-funded programs.

Response: The intention of the tax provision is to address State or local

government taxes, or changes in tax policy, that disproportionately affect a federally-funded program. Under the Circular, such taxes are unallowable. (As explained in the next comment-and-response, where a Federal statute prescribes a different treatment for taxes, that statute controls.)

For example, a tax would disproportionately affect a Federal program if the tax were defined or applied so that it was imposed only in connection with that program, or only in connection with Federal programs generally. Another example would be if a sales tax were imposed on a good or service that in practice is used solely or disproportionately in connection with Federal programs. These examples are for illustration, and are not meant to be exclusive. Whether a particular tax, or change in tax policy, would disproportionately affect a Federal program will have to be determined based on a review of the tax and the Federal programs in question.

When a governmental unit pays a tax to itself, that self-assessed tax is not a true cost to the governmental unit. Especially where a self-assessed tax disproportionately affects a Federal program, it is not appropriate for the governmental unit to be able to characterize that tax as a "cost" of its participation in the Federal program. If such disproportionate, self-assessed taxes were treated as allowable, even though they disproportionately affect Federal programs, governmental units could define or apply taxes in such a way that their net impact would largely be to increase the Federal Government's contribution, rather than to raise revenues from the taxpayer. To the extent that making such taxes unallowable would result in a loss of Federal assistance awards, the Circular allows three years for governmental units to phase-out any existing taxes that disproportionately affect Federal programs. (For the larger formula grant programs, the disallowance of such taxes would not result in any loss of Federal assistance awards; the funds which are now used to pay self-assessed taxes could be used to further the objectives of the Federal assistance.)

Comment: The proposed revision on sales taxes is directly contrary to the legislative intent of Public Law 102-234, "Medicaid Voluntary Contributions and Provider Specific Tax Amendments of 1991." The proposal should be revised to preclude its application to broad-based health care related taxes paid by public entities.

Response: The Circular would not take precedence over a statute. If any statute specifically prescribes policies

and specific requirements that differ from the Circular, the statute will govern.

Comment: State sales taxes collected by another level of government should be exempt from the provisions of the Circular.

Response: As noted above, the Circular's disallowance is directed at self-assessed taxes. Thus, if a local government receives an award directly from the Federal Government, and pays a State sales tax on purchases made in connection with that award, the tax is an allowable cost. (However, as previously noted, the Circular does not restrict the authority of Federal agencies to identify taxes where Federal participation is inappropriate.)

However, if the local government does not receive the award directly from the Federal Government, but instead receives the award indirectly by virtue of a State pass-through, then the sales tax that the local government pays the State is in reality a self-assessed tax, which would be unallowable if the tax disproportionately affects a Federal program.

Comment: It is not clear whether the prohibition on payment of sales taxes applies to out-of-state sales tax.

Response: Since they are not self-assessed, taxes assessed by other States, or political subdivisions of other States, are not unallowable under the Circular. (However, as previously noted, the Circular does not restrict the authority of Federal agencies to identify taxes where Federal participation is inappropriate.)

Travel Costs

Comment: Airfare costs in excess of the lowest available commercial discount fare are unallowable. With today's confusing array of super savers and fare wars, the burden involved in proving the lowest airfare would be considerable.

Response: The travel provisions were changed to say travel costs in excess of the customary standard (coach or equivalent) airfare are unallowable.

State/Local-Wide Central Service Cost Allocation Plans—Attachment C

Comment: Working capital reserves in many cases should not be limited to 60 days cash expenses. Time consuming collections, uneven usage levels, and unanticipated demand for services are some of the reasons for authorizing a larger reserve.

Response: OMB believes the 60 day reserve should provide the flexibility required by most funds to operate from one billing cycle to the next. However, the Circular was amended to provide for

a larger reserve in exceptional cases when approved by the cognizant Federal agency.

Comment: The Circular should not restrict governmental units from engaging an accounting firm to prepare an indirect cost proposal and then engaging the same firm to make subsequent audits.

Response: This provision was deleted from the Circular. This issue will be addressed as part of OMB policy changes to other OMB grants management circulars.

Comment: What are the criteria OMB uses for making cognizant assignments and for defining "major governments"?

Response: OMB is in the process of reviewing the cognizant assignments for governmental units. Only governmental units receiving substantial amounts of direct Federal assistance will be assigned a Federal cognizant agency and be required to submit plans to those cognizant agencies. Because the mix of Federal awards has changed so much since the last list was issued, OMB needs to develop a new dollar criterion for defining "major."

Comment: States and other prime grantees should not be required to monitor subrecipient cost allocation plans and/or negotiate sub-recipient indirect costs.

Response: The grants management common rule requires governmental units to monitor subawards to assure compliance with applicable Federal requirements. These requirements include compliance with the cost principles. In those cases where the subrecipient does not receive any Federal awards directly from the Federal Government, Federal agencies would not have any direct responsibility for negotiating indirect costs.

Comment: Attachment C, Section E states that "The documentation requirements in this section may be modified, expanded, or reduced by the cognizant agency on a case-by-case basis." This specific sentence might allow a Federal cognizant agency to unreasonably and unilaterally expand the documentation requirements.

Response: Federal agencies should have the flexibility to obtain additional data, when necessary. However, OMB agrees that this type of request should be the exception rather than the rule.

Comment: Documentation for internal service funds seems excessive since these areas are audited. This documentation is more appropriately included in a State or local government's financial statements and work papers for the fiscal year rather than in the entity's cost allocation plan.

Response: OMB amended this section to require only the largest funds to submit data. If the required data are included in the governmental unit's financial statements, submission of the financial statements to the Federal cognizant agency will meet the requirements of the Circular.

Comment: OMB proposed to add provisions requiring the certification of cost allocation plans and of indirect cost rates (see preamble (58 FR 44218); Attachment C, Section E.4 (58 FR 44229); Attachment D, Section D.3 (58 FR 44230-31); and Attachment E, Section D.3 (58 FR 44233)). States objected to the inclusion of the phrase "under penalty of perjury" in the proposed certification. They contended that the phrase is unnecessary.

Response: OMB has decided to amend the Circular to add the proposed certifications, but OMB has accepted the commenters' suggestion that the phrase "under penalty of perjury" not be included in the certifications. OMB believes that, when the Federal Government is dealing with State and local governments, it is unnecessary to require that the certifying government official sign a certification stating that it is made "under penalty of perjury." State and local officials should not conclude, however, that the omission of the phrase "under penalty of perjury" means that no potential legal liability is associated with a certification's submission. In this regard, note the provision in Federal law imposing criminal penalties for "false, fictitious or fraudulent statements or representations" (18 U.S.C. 1001). The Department of Justice is responsible for enforcing this provision (and other laws regarding false statements and claims). OMB expresses no opinion concerning the potential legal liabilities that are associated with making the certifications in the revised Circular.

Comment: Restricting the authority to reopen Central Service Plans to the Federal cognizant agency is inequitable.

Response: This section was changed to state that agreements may be subject to reopening only if the agreement is subsequently found to violate a statute or the information upon which the plan was negotiated is later found to be materially incomplete or inaccurate.

Comment: GAAP for State and local governments do not require internal service activities to be accounted for and reported in proprietary accounts.

Response: The requirement for internal service activities to be accounted for in proprietary accounts was deleted.

Comment: Remove the requirement that a carry forward adjustment is not

permitted for a central service activity that was not included in the approved plan.

Response: The carry forward technique was intended to permit adjustments for differences between actual and estimated costs of services included in a cost allocation plan. It was not intended to shift the entire cost of an activity excluded from the year of the plan to a future year. There may be circumstances where a change to the plan should be considered (e.g., the service did not exist when the plan was established and was initiated during the year covered by the plan). This type of amendment should modify the plan itself and would not be handled through a carry forward adjustment.

Comment: Adjustments of billed services do not provide a workable solution for the larger central services of the States. The dollar limitation of \$50,000 for making adjustments through allocated central services is too low.

Response: This section was rewritten to provide governmental units more options and flexibility in making adjustments to Federal awards.

Public Assistance Cost Allocation Plans—Attachment D

Comment: The public assistance cost allocation plans are narrative descriptions of cost allocation procedures rather than allocations of actual costs. The provisions dealing with refunds or adjustments related to unallowable costs and the certification of cost allowability do not appear appropriate.

Response: The certification and the provisions dealing with refunds and adjustments were deleted.

State and Local Indirect Cost Rate Proposals—Attachment E

Comment: The Circular is silent on the time period for use of predetermined rates.

Response: The Circular was amended to encourage the use of indirect cost rates for a period of two to four years.

Comment: Governmental units should notify the Federal Government of any accounting changes that might make it necessary to renegotiate the predetermined rate.

Response: A provision was added to the certification which requires the governmental unit to notify the Federal Government of any accounting changes that would effect the application of the predetermined rate.

C. Procurement Issues

Several procurement issues arose during the Federal Government's internal review process. This section clarifies the procurement issues.

Effective Date for Governmental Units With Predetermined Rates Beyond September 1, 1995

For a governmental unit that already has established indirect cost rates beyond September 1, 1995, the effective date of the revised Circular shall be at the start of the next accounting period beginning on or after September 1, 1995, for which the governmental unit has not yet established a predetermined indirect cost rate.

Depreciation Method(s) for CAS-Covered Contracts

CAS-covered contracts subject to "full coverage" under CASB shall follow the standards promulgated by CASB in the computation of depreciation.

Allowability of Interest Expenses for CAS-Covered Contracts

For contracts subject to CAS 414 (48 CFR 9903.414, cost of money as an element of the cost of capital), and CAS 417 (48 CFR 9903.417, cost of money as an element of the cost of capital assets under construction), the imputed cost of money determined allocable in accordance with CAS 414 and 417 may be claimed as an allowable cost. When cost of money is claimed, interest shall not be an allowable direct or indirect cost under such contracts.

D. Federal Acquisition Streamline Act

The Federal Acquisition Streamlining Act (FASA) of 1994, enacted on October 13, 1994, amended Section 306(e) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 256, Public Law 103-355, Section 2151, 108 Stat. 3309-12), to specify certain items of costs as not allowable under Federal covered contracts. OMB is undertaking a review of these FASA provisions, for the purpose of determining whether the unallowable cost provisions of Circular A-87, and of OMB's other cost principles circulars, should be amended in light of the FASA provisions on unallowable costs. If OMB ultimately concludes that amendments may be appropriate, OMB will issue a proposal

seeking public comment on the proposed revisions.

John B. Arthur,

Associate Director for Administration.

Executive Office of The President

Office of Management and Budget

Washington, DC 20503

May 4, 1995.

Circular No. A-87 Revised

To the Heads of Executive Departments and Establishments

From: Alice M. Rivlin, Director

Subject: Cost Principles for State, Local, and Indian Tribal Governments

1. **Purpose.** This Circular establishes principles and standards for determining costs for Federal awards carried out through grants, cost reimbursement contracts, and other agreements with State and local governments and federally-recognized Indian tribal governments (governmental units).

2. **Authority.** This Circular is issued under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Procedures Act of 1950, as amended; the Chief Financial Officers Act of 1990; Reorganization Plan No. 2 of 1970; and Executive Order No. 11541 ("Prescribing the Duties of the Office of Management and Budget and the Domestic Policy Council in the Executive Office of the President").

3. **Background.** An interagency task force was established in 1987 to review existing cost principles for Federal awards to State, local, and Indian tribal governments. The task force studied Inspector General reports and recommendations, solicited suggestions for changes to the Circular from governmental units, and compared for consistency the provisions of other OMB cost principles circulars covering non-profit organizations and universities. A proposed revised Circular reflecting the results of those efforts was issued on October 12, 1988, and August 19, 1993. Extensive comments on the proposed revisions, discussions with interest groups, and related developments were considered in developing this revision.

4. **Rescissions.** This Circular rescinds and supersedes Circular A-87, issued January 15, 1981.

5. **Policy.** This Circular establishes principles and standards to provide a uniform approach for determining costs and to promote effective program delivery, efficiency, and better relationships between governmental units and the Federal Government. The principles are for determining allowable costs only. They are not intended to identify the circumstances or to dictate the extent of Federal and governmental unit participation in the financing of a particular Federal award. Provision for profit or other increment above cost is outside the scope of this Circular.

6. **Definitions.** Definitions of key terms used in this Circular are contained in Attachment A, Section B.

7. **Required Action.** Agencies responsible for administering programs that involve cost reimbursement contracts, grants, and other agreements with governmental units shall

issue codified regulations to implement the provisions of this Circular and its Attachments by September 1, 1995.

8. **OMB Responsibilities.** The Office of Management and Budget (OMB) will review agency regulations and implementation of this Circular, and will provide policy interpretations and assistance to insure effective and efficient implementation. Any exceptions will be subject to approval by OMB. Exceptions will only be made in particular cases where adequate justification is presented.

9. **Information Contact.** Further information concerning this Circular may be obtained by contacting the Office of Federal Financial Management, Financial Standards and Reporting Branch, Office of Management and Budget, Washington, DC 20503, telephone 202-395-3993.

10. **Policy Review Date.** OMB Circular A-87 will have a policy review three years from the date of issuance.

11. **Effective Date.** This Circular is effective as follows:

- For costs charged indirectly or otherwise covered by the cost allocation plans described in Attachments C, D and E, this revision shall be applied to cost allocation plans and indirect cost proposals submitted or prepared for a governmental unit's fiscal year that begins on or after September 1, 1995.
- For other costs, this revision shall be applied to all awards or amendments, including continuation or renewal awards, made on or after September 1, 1995.

OMB Circular No. A-87—Cost Principles for State, Local and Indian Tribal Governments

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A. Purpose and Scope

1. **Objectives.** This Attachment establishes principles for determining the allowable costs incurred by State, local, and federally-recognized Indian tribal governments (governmental units) under grants, cost reimbursement contracts, and other agreements with the Federal Government (collectively referred to in this Circular as "Federal awards"). The principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent of Federal or governmental unit participation in the financing of a particular program or project. The principles are designed to provide that Federal awards bear their fair share of cost recognized under these principles except where restricted or prohibited by law. Provision for profit or other increment above cost is outside the scope of this Circular.

2. Policy guides.

a. The application of these principles is based on the fundamental premises that:

- (1) Governmental units are responsible for the efficient and effective administration of Federal awards through the application of sound management practices.
- (2) Governmental units assume responsibility for administering Federal funds in a manner consistent with underlying agreements, program objectives, and the terms and conditions of the Federal award.

(3) Each governmental unit, in recognition of its own unique combination of staff, facilities, and experience, will have the primary responsibility for employing whatever form of organization and management

techniques may be necessary to assure proper and efficient administration of Federal awards.

b. Federal agencies which wish to test alternative mechanisms for paying costs for administering Federal programs. The Office of Management and Budget (OMB) encourages Federal agencies to test fee-for-service alternatives as a replacement for current cost-reimbursement payment methods in response to the National Performance Review's (NPR) recommendation. The NPR recommended the fee-for-service approach to reduce the burden associated with maintaining systems for charging administrative costs to Federal programs and preparing and approving cost allocation plans. This approach should also increase incentives for administrative efficiencies and improve outcomes.

3. Application.

a. These principles will be applied by all Federal agencies in determining costs incurred by governmental units under Federal awards (including subawards) except those with (1) Publicly-financed educational institutions subject to OMB Circular A-21, "Cost Principles for Educational Institutions," and (2) programs administered by publicly-owned hospitals and other providers of medical care that are subject to requirements promulgated by the sponsoring Federal agencies. However, this Circular does apply to all central service and department/agency costs that are allocated or billed to those educational institutions, hospitals, and other providers of medical care or services by other State and local government departments and agencies.

b. All subawards are subject to those Federal cost principles applicable to the particular organization concerned. Thus, if a subaward is to a governmental unit (other than a college, university or hospital), this Circular shall apply; if a subaward is to a commercial organization, the cost principles applicable to commercial organizations shall apply; if a subaward is to a college or university, Circular A-21 shall apply; if a subaward is to a hospital, the cost principles used by the Federal awarding agency for awards to hospitals shall apply, subject to the provisions of subsection A.3.a. of this Attachment; if a subaward is to some other non-profit organization, Circular A-122, "Cost Principles for Non-Profit Organizations," shall apply.

c. These principles shall be used as a guide in the pricing of fixed price arrangements where costs are used in determining the appropriate price.

d. Where a Federal contract awarded to a governmental unit incorporates a Cost Accounting Standards (CAS) clause, the requirements of that clause shall apply. In such cases, the governmental unit and the cognizant Federal agency shall establish an appropriate advance agreement on how the governmental unit will comply with applicable CAS requirements when estimating, accumulating and reporting costs under CAS-covered contracts. The agreement shall indicate that OMB Circular A-87 requirements will be applied to other Federal awards. In all cases, only one set of records needs to be maintained by the governmental unit.

B. Definitions

1. "Approval or authorization of the awarding or cognizant Federal agency" means documentation evidencing consent prior to incurring a specific cost. If such costs are specifically identified in a Federal award document, approval of the document constitutes approval of the costs. If the costs are covered by a State/local-wide cost allocation plan or an indirect cost proposal, approval of the plan constitutes the approval.

2. "Award" means grants, cost reimbursement contracts and other agreements between a State, local and Indian tribal government and the Federal Government.

3. "Awarding agency" means (a) with respect to a grant, cooperative agreement, or cost reimbursement contract, the Federal agency, and (b) with respect to a subaward, the party that awarded the subaward.

4. "Central service cost allocation plan" means the documentation identifying, accumulating, and allocating or developing billing rates based on the allowable costs of services provided by a governmental unit on a centralized basis to its departments and agencies. The costs of these services may be allocated or billed to users.

5. "Claim" means a written demand or written assertion by the governmental unit or grantor seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of award terms, or other relief arising under or relating to the award. A voucher, invoice or other routine request for payment that is not a dispute when submitted is not a claim. Appeals, such as those filed by a governmental unit in response to questioned audit costs, are not considered claims until a final management decision is made by the Federal awarding agency.

6. "Cognizant agency" means the Federal agency responsible for reviewing, negotiating, and approving

cost allocation plans or indirect cost proposals developed under this Circular on behalf of all Federal agencies. OMB publishes a listing of cognizant agencies.

7. "Common Rule" means the "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments: Final Rule" originally issued at 53 FR 8034-8103 (March 11, 1988). Other common rules will be referred to by their specific titles.

8. "Contract" means a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to): awards and notices of awards; job orders or task orders issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and, bilateral contract modifications. Contracts do not include grants and cooperative agreements covered by 31 U.S.C. 6301 et seq.

9. "Cost" means an amount as determined on a cash, accrual, or other basis acceptable to the Federal awarding or cognizant agency. It does not include transfers to a general or similar fund.

10. "Cost allocation plan" means central service cost allocation plan, public assistance cost allocation plan, and indirect cost rate proposal. Each of these terms are further defined in this section.

11. "Cost objective" means a function, organizational subdivision, contract, grant, or other activity for which cost data are needed and for which costs are incurred.

12. "Federally-recognized Indian tribal government" means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any native village as defined in Section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688) certified by the Secretary of the Interior as eligible for the special programs and services provided through the Bureau of Indian Affairs.

13. "Governmental unit" means the entire State, local, or federally-recognized Indian tribal government, including any component thereof. Components of governmental units may function independently of the

governmental unit in accordance with the term of the award.

14. "Grantee department or agency" means the component of a State, local, or federally-recognized Indian tribal government which is responsible for the performance or administration of all or some part of a Federal award.

15. "Indirect cost rate proposal" means the documentation prepared by a governmental unit or component thereof to substantiate its request for the establishment of an indirect cost rate as described in Attachment E of this Circular.

16. "Local government" means a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (whether or not incorporated as a non-profit corporation under State law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

17. "Public assistance cost allocation plan" means a narrative description of the procedures that will be used in identifying, measuring and allocating all administrative costs to all of the programs administered or supervised by State public assistance agencies as described in Attachment D of this Circular.

18. "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments.

C. Basic Guidelines

1. *Factors affecting allowability of costs.* To be allowable under Federal awards, costs must meet the following general criteria:

- a. Be necessary and reasonable for proper and efficient performance and administration of Federal awards.
- b. Be allocable to Federal awards under the provisions of this Circular.
- c. Be authorized or not prohibited under State or local laws or regulations.
- d. Conform to any limitations or exclusions set forth in these principles, Federal laws, terms and conditions of the Federal award, or other governing regulations as to types or amounts of cost items.
- e. Be consistent with policies, regulations, and procedures that apply uniformly to both Federal awards and other activities of the governmental unit.

f. Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like

circumstances has been allocated to the Federal award as an indirect cost.

g. Except as otherwise provided for in this Circular, be determined in accordance with generally accepted accounting principles.

b. Not be included as a cost or used to meet cost sharing or matching requirements of any other Federal award in either the current or a prior period, except as specifically provided by Federal law or regulation.

i. Be the net of all applicable credits.

j. Be adequately documented.

2. *Reasonable costs.* A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of reasonableness is particularly important when governmental units or components are predominately federally-funded. In determining reasonableness of a given cost, consideration shall be given to:

a. Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the governmental unit or the performance of the Federal award.

b. The restraints or requirements imposed by such factors as: sound business practices; arms length bargaining; Federal, State and other laws and regulations; and, terms and conditions of the Federal award.

c. Market prices for comparable goods or services.

d. Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the governmental unit, its employees, the public at large, and the Federal Government.

e. Significant deviations from the established practices of the governmental unit which may unjustifiably increase the Federal award's cost.

3. *Allocable costs.*

a. A cost is allocable to a particular cost objective if the goods or services involved are chargeable or assignable to such cost objective in accordance with relative benefits received.

b. All activities which benefit from the governmental unit's indirect cost, including unallowable activities and services donated to the governmental unit by third parties, will receive an appropriate allocation of indirect costs.

c. Any cost allocable to a particular Federal award or cost objective under the principles provided for in this Circular may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by law or terms of the Federal

awards, or for other reasons. However, this prohibition would not preclude governmental units from shifting costs that are allowable under two or more awards in accordance with existing program agreements.

d. Where an accumulation of indirect costs will ultimately result in charges to a Federal award, a cost allocation plan will be required as described in Attachments C, D, and E.

4. *Applicable credits.*

a. Applicable credits refer to those receipts or reduction of expenditure-type transactions that offset or reduce expense items allocable to Federal awards as direct or indirect costs. Examples of such transactions are: purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds or rebates, and adjustments of overpayments or erroneous charges. To the extent that such credits accruing to or received by the governmental unit relate to allowable costs, they shall be credited to the Federal award either as a cost reduction or cash refund, as appropriate.

b. In some instances, the amounts received from the Federal Government to finance activities or service operations of the governmental unit should be treated as applicable credits. Specifically, the concept of netting such credit items (including any amounts used to meet cost sharing or matching requirements) should be recognized in determining the rates or amounts to be charged to Federal awards. (See Attachment B, item 15, "Depreciation and use allowances," for areas of potential application in the matter of Federal financing of activities.)

D. *Composition of Cost*

1. *Total cost.* The total cost of Federal awards is comprised of the allowable direct cost of the program, plus its allocable portion of allowable indirect costs, less applicable credits.

2. *Classification of costs.* There is no universal rule for classifying certain costs as either direct or indirect under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the Federal award or other final cost objective. Therefore, it is essential that each item of cost be treated consistently in like circumstances either as a direct or an indirect cost. Guidelines for determining direct and indirect costs charged to Federal awards are provided in the sections that follow.

E. *Direct Costs*

1. *General.* Direct costs are those that can be identified specifically with a particular final cost objective.

2. *Application.* Typical direct costs chargeable to Federal awards are:

a. Compensation of employees for the time devoted and identified specifically to the performance of those awards.

b. Cost of materials acquired, consumed, or expended specifically for the purpose of those awards.

c. Equipment and other approved capital expenditures.

d. Travel expenses incurred specifically to carry out the award.

3. *Minor items.* Any direct cost of a minor amount may be treated as an indirect cost for reasons of practicality where such accounting treatment for that item of cost is consistently applied to all cost objectives.

F. *Indirect Costs*

1. *General.* Indirect costs are those: (a) incurred for a common or joint purpose benefiting more than one cost objective, and (b) not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved. The term "indirect costs," as used herein, applies to costs of this type originating in the grantee department, as well as those incurred by other departments in supplying goods, services, and facilities. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect costs within a governmental unit department or in other agencies providing services to a governmental unit department. Indirect cost pools should be distributed to benefitted cost objectives on bases that will produce an equitable result in consideration of relative benefits derived.

2. *Cost allocation plans and indirect cost proposals.* Requirements for development and submission of cost allocation plans and indirect cost rate proposals are contained in Attachments C, D, and E.

3. *Limitation on indirect or administrative costs.*

a. In addition to restrictions contained in this Circular, there may be laws that further limit the amount of administrative or indirect cost allowed.

b. Amounts not recoverable as indirect costs or administrative costs under one Federal award may not be shifted to another Federal award, unless specifically authorized by Federal legislation or regulation.

G. Interagency Services

The cost of services provided by one agency to another within the governmental unit may include allowable direct costs of the service plus a pro rate share of indirect costs. A standard indirect cost allowance equal to ten percent of the direct salary and wage cost of providing the service (excluding overtime, shift premiums, and fringe benefits) may be used in lieu of determining the actual indirect costs of the service. These services do not include centralized services included in central service cost allocation plans as described in Attachment C.

H. Required Certifications

Each cost allocation plan or indirect cost rate proposal required by Attachments C and E must comply with the following:

1. No proposal to establish a cost allocation plan or an indirect cost rate, whether submitted to a Federal cognizant agency or maintained on file by the governmental unit, shall be acceptable unless such costs have been certified by the governmental unit using the Certificate of Cost Allocation Plan or Certificate of Indirect Costs as set forth in Attachments C and E. The certificate must be signed on behalf of the governmental unit by an individual at a level no lower than chief financial officer of the governmental unit that submits the proposal or component covered by the proposal.
2. No cost allocation plan or indirect cost rate shall be approved by the Federal Government unless the plan or rate proposal has been certified. Where it is necessary to establish a cost allocation plan or an indirect cost rate and the governmental unit has not submitted a certified proposal for establishing such a plan or rate in accordance with the requirements, the Federal Government may either disallow all indirect costs or unilaterally establish such a plan or rate. Such a plan or rate may be based upon audited historical data or such other data that have been furnished to the cognizant Federal agency and for which it can be demonstrated that all unallowable costs have been excluded. When a cost allocation plan or indirect cost rate is unilaterally established by the Federal Government because of failure of the governmental unit to submit a certified proposal, the plan or rate established will be set to ensure that potentially unallowable costs will not be reimbursed.

Attachment B—Selected Items of Cost**Table of Contents**

1. Accounting
2. Advertising and public relations costs
3. Advisory councils
4. Alcoholic beverages
5. Audit services
6. Automatic electronic data processing
7. Bad debts
8. Bonding costs
9. Budgeting
10. Communications
11. Compensation for personnel services
 - a. General
 - b. Reasonableness
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 - e. Pension plan costs
 - f. Post-retirement health benefits
 - g. Severance pay
 - h. Support of salaries and wages
 - i. Donated services
12. Contingencies
13. Contributions and donations
14. Defense and prosecution of criminal and civil proceedings, and claims
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16. Disbursing service
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18. Entertainment
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20. Fines and penalties
21. Fund raising and investment management costs
22. Gains and losses on disposition of depreciable property and other capital assets and substantial relocation of Federal programs
23. General government expenses
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25. Insurance and indemnification
26. Interest
27. Lobbying
28. Maintenance, operations, and repairs
29. Materials and supplies
30. Memberships, subscriptions, and professional activities
31. Motor pools
32. Pre-award costs
33. Professional service costs
34. Proposal costs
35. Publication and printing costs
36. Rearrangements and alterations
37. Reconversion costs
38. Rental costs
39. Taxes
40. Training
41. Travel costs
42. Underrecovery of costs under Federal agreements

Sections 1 through 42 provide principles to be applied in establishing the allowability or unallowability of certain items of cost. These principles apply whether a cost is treated as direct or indirect. A cost is allowable for Federal reimbursement only to the extent of benefits received by Federal awards and its conformance with the general policies and principles stated in Attachment A to this Circular. Failure to mention a particular item of cost in

these sections is not intended to imply that it is either allowable or unallowable; rather, determination of allowability in each case should be based on the treatment or standards provided for similar or related items of cost.

1. *Accounting.* The cost of establishing and maintaining accounting and other information systems is allowable.

2. *Advertising and public relations costs.*

a. The term "advertising costs" means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television programs, direct mail, exhibits, and the like.

b. The term "public relations" includes community relations and means those activities dedicated to maintaining the image of the governmental unit or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public.

c. Advertising costs are allowable only when incurred for the recruitment of personnel, the procurement of goods and services, the disposal of surplus materials, and any other specific purposes necessary to meet the requirements of the Federal award. Advertising costs associated with the disposal of surplus materials are not allowable where all disposal costs are reimbursed based on a standard rate as specified in the grants management common rule.

d. Public relations costs are allowable when:

- (1) Specifically required by the Federal award and then only as a direct cost;
- (2) Incurred to communicate with the public and press pertaining to specific activities or accomplishments that result from performance of the Federal award and then only as a direct cost; or
- (3) Necessary to conduct general liaison with news media and government public relations officers, to the extent that such activities are limited to communication and liaison necessary to keep the public informed on matters of public concern, such as notices of Federal contract/grant awards, financial matters, etc.

e. Unallowable advertising and public relations costs include the following:

- (1) All advertising and public relations costs other than as specified in subsections c. and d.;
- (2) Except as otherwise permitted by these cost principles, costs of conventions, meetings, or other events

related to other activities of the governmental unit including:

(a) Costs of displays, demonstrations, and exhibits;

(b) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and

(c) Salaries and wages of employees engaged in setting up and displaying exhibits, making demonstrations, and providing briefings;

(3) Costs of promotional items and memorabilia, including models, gifts, and souvenirs; and

(4) Costs of advertising and public relations designed solely to promote the governmental unit.

3. *Advisory councils.* Costs incurred by advisory councils or committees are allowable as a direct cost where authorized by the Federal awarding agency or as an indirect cost where allocable to Federal awards.

4. *Alcoholic beverages.* Costs of alcoholic beverages are unallowable.

5. *Audit services.* The costs of audits are allowable provided that the audits were performed in accordance with the Single Audit Act, as implemented by Circular A-128, "Audits of State and Local Governments." Generally, the percentage of costs charged to Federal awards for a single audit shall not exceed the percentage derived by dividing Federal funds expended by total funds expended by the recipient or subrecipient (including program matching funds) during the fiscal year. The percentage may be exceeded only if appropriate documentation demonstrates higher actual costs.

Other audit costs are allowable if specifically approved by the awarding or cognizant agency as a direct cost to an award or included as an indirect cost in a cost allocation plan or rate.

6. *Automatic electronic data processing.* The cost of data processing services is allowable (but see section 19. Equipment and other capital expenditures).

7. *Bad debts.* Any losses arising from uncollectible accounts and other claims, and related costs, are unallowable unless provided for in Federal program award regulations.

8. *Bonding costs.* Costs of bonding employees and officials are allowable to the extent that such bonding is in accordance with sound business practice.

9. *Budgeting.* Costs incurred for the development, preparation, presentation, and execution of budgets are allowable.

10. *Communications.* Costs of telephone, mail, messenger, and similar communication services are allowable.

11. *Compensation for personnel services.*

a. *General.* Compensation for personnel services includes all remuneration, paid currently or accrued, for services rendered during the period of performance under Federal awards, including but not necessarily limited to wages, salaries, and fringe benefits. The costs of such compensation are allowable to the extent that they satisfy the specific requirements of this Circular, and that the total compensation for individual employees:

(1) Is reasonable for the services rendered and conforms to the established policy of the governmental unit consistently applied to both Federal and non-Federal activities;

(2) Follows an appointment made in accordance with a governmental unit's laws and rules and meets merit system or other requirements required by Federal law, where applicable; and

(3) Is determined and supported as provided in subsection h.

b. *Reasonableness.* Compensation for employees engaged in work on Federal awards will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the governmental unit. In cases where the kinds of employees required for Federal awards are not found in the other activities of the governmental unit, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the employing government competes for the kind of employees involved. Compensation surveys providing data representative of the labor market involved will be an acceptable basis for evaluating reasonableness.

c. *Unallowable costs.* Costs which are unallowable under other sections of these principles shall not be allowable under this section solely on the basis that they constitute personnel compensation.

d. *Fringe benefits.*

(1) Fringe benefits are allowances and services provided by employers to their employees as compensation in addition to regular salaries and wages. Fringe benefits include, but are not limited to, the costs of leave, employee insurance, pensions, and unemployment benefit plans. Except as provided elsewhere in these principles, the costs of fringe benefits are allowable to the extent that the benefits are reasonable and are required by law, governmental unit-employee agreement, or an established policy of the governmental unit.

(2) The cost of fringe benefits in the form of regular compensation paid to

employees during periods of authorized absences from the job, such as for annual leave, sick leave, holidays, court leave, military leave, and other similar benefits, are allowable if: (a) they are provided under established written leave policies; (b) the costs are equitably allocated to all related activities, including Federal awards; and, (c) the accounting basis (cash or accrual) selected for costing each type of leave is consistently followed by the governmental unit.

(3) When a governmental unit uses the cash basis of accounting, the cost of leave is recognized in the period that the leave is taken and paid for. Payments for unused leave when an employee retires or terminates employment are allowable in the year of payment provided they are allocated as a general administrative expense to all activities of the governmental unit or component.

(4) The accrual basis may be only used for those types of leave for which a liability as defined by Generally Accepted Accounting Principles (GAAP) exists when the leave is earned. When a governmental unit uses the accrual basis of accounting, in accordance with GAAP, allowable leave costs are the lesser of the amount accrued or funded.

(5) The cost of fringe benefits in the form of employer contributions or expenses for social security; employee life, health, unemployment, and worker's compensation insurance (except as indicated in section 25. Insurance and indemnification); pension plan costs (see subsection e. 1. and other similar benefits are allowable provided such benefits are granted under established written policies. Such benefits, whether treated as indirect costs or as direct costs, shall be allocated to Federal awards and all other activities in a manner consistent with the pattern of benefits attributable to the individuals or group(s) of employees whose salaries and wages are chargeable to such Federal awards and other activities.

e. *Pension plan costs.* Pension plan costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written policies of the governmental unit.

(1) For pension plans financed on a pay-as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(2) Pension costs calculated using an actuarial cost-based method recognized by GAAP are allowable for a given fiscal year if they are funded for that year.

within six months after the end of that year. Costs funded after the six month period (or a later period agreed to by the cognizant agency) are allowable in the year funded. The cognizant agency may agree to an extension of the six month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursement and the governmental unit's contribution to the pension fund. Adjustments may be made by cash refund or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the pension fund.

(3) Amounts funded by the governmental unit in excess of the actuarially determined amount for a fiscal year may be used as the governmental unit's contribution in future periods.

(4) When a governmental unit converts to an acceptable actuarial cost method, as defined by GAAP, and funds pension costs in accordance with this method, the unfunded liability at the time of conversion shall be allowable if amortized over a period of years in accordance with GAAP.

(5) The Federal Government shall receive an equitable share of any previously allowed pension costs (including earnings thereon) which revert or inure to the governmental unit in the form of a refund, withdrawal, or other credit.

f. Post-retirement health benefits. Post-retirement health benefits (PRHB) refers to costs of health insurance or health services not included in a pension plan covered by subsection e. for retirees and their spouses, dependents, and survivors. PRHB costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written policies of the governmental unit.

(1) For PRHB financed on a pay-as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(2) PRHB costs calculated using an actuarial cost method recognized by GAAP are allowable if they are funded for that year within six months after the end of that year. Costs funded after the six month period (or a later period agreed to by the cognizant agency) are allowable in the year funded. The cognizant agency may agree to an extension of the six month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursements and the

governmental unit's contributions to the PRHB fund. Adjustments may be made by cash refund, reduction in current year's PRHB costs, or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the PRHB fund.

(3) Amounts funded in excess of the actuarially determined amount for a fiscal year may be used as the government's contribution in a future period.

(4) When a governmental unit converts to an acceptable actuarial cost method and funds PRHB costs in accordance with this method, the initial unfunded liability attributable to prior years shall be allowable if amortized over a period of years in accordance with GAAP, or, if no such GAAP period exists, over a period negotiated with the cognizant agency.

(5) To be allowable in the current year, the PRHB costs must be paid either to:

(a) An insurer or other benefit provider as current year costs or premiums, or

(b) An insurer or trustee to maintain a trust fund or reserve for the sole purpose of providing post-retirement benefits to retirees and other beneficiaries.

(6) The Federal Government shall receive an equitable share of any amounts of previously allowed post-retirement benefit costs (including earnings thereon) which revert or inure to the governmental unit in the form of a refund, withdrawal, or other credit.

g. Severance pay.

(1) Payments in addition to regular salaries and wages made to workers whose employment is being terminated are allowable to the extent that, in each case, they are required by (a) law, (b) employer-employee agreement, or (c) established written policy.

(2) Severance payments (but not accruals) associated with normal turnover are allowable. Such payments shall be allocated to all activities of the governmental unit as an indirect cost.

(3) Abnormal or mass severance pay will be considered on a case-by-case basis and is allowable only if approved by the cognizant Federal agency.

h. Support of salaries and wages. These standards regarding time distribution are in addition to the standards for payroll documentation.

(1) Charges to Federal awards for salaries and wages, whether treated as direct or indirect costs, will be based on payrolls documented in accordance with generally accepted practice of the governmental unit and approved by a

responsible official(s) of the governmental unit.

(2) No further documentation is required for the salaries and wages of employees who work in a single indirect cost activity.

(3) Where employees are expected to work solely on a single Federal award or cost objective, charges for their salaries and wages will be supported by periodic certifications that the employees worked solely on that program for the period covered by the certification. These certifications will be prepared at least semi-annually and will be signed by the employee or supervisory official having first hand knowledge of the work performed by the employee.

(4) Where employees work on multiple activities or cost objectives, a distribution of their salaries or wages will be supported by personnel activity reports or equivalent documentation which meets the standards in subsection (5) unless a statistical sampling system (see subsection (6)) or other substitute system has been approved by the cognizant Federal agency. Such documentary support will be required where employees work on:

(a) More than one Federal award.

(b) A Federal award and a non-Federal award.

(c) An indirect cost activity and a direct cost activity.

(d) Two or more indirect activities which are allocated using different allocation bases, or

(e) An unallowable activity and a direct or indirect cost activity.

(5) Personnel activity reports or equivalent documentation must meet the following standards:

(a) They must reflect an after-the-fact distribution of the actual activity of each employee.

(b) They must account for the total activity for which each employee is compensated.

(c) They must be prepared at least monthly and must coincide with one or more pay periods, and

(d) They must be signed by the employee.

(e) Budget estimates or other distribution percentages determined before the services are performed do not qualify as support for charges to Federal awards but may be used for interim accounting purposes, provided that:

(i) The governmental unit's system for establishing the estimates produces reasonable approximations of the activity actually performed;

(ii) At least quarterly, comparisons of actual costs to budgeted distributions based on the monthly activity reports are made. Costs charged to Federal

awards to reflect adjustments made as a result of the activity actually performed may be recorded annually if the quarterly comparisons show the differences between budgeted and actual costs are less than ten percent, and

(iii) The budget estimates or other distribution percentages are revised at least quarterly, if necessary, to reflect changed circumstances.

(6) Substitute systems for allocating salaries and wages to Federal awards may be used in place of activity reports. These systems are subject to approval if required by the cognizant agency. Such systems may include, but are not limited to, random moment sampling, case counts, or other quantifiable measures of employee effort.

(a) Substitute systems which use sampling methods (primarily for Aid to Families with Dependent Children (AFDC), Medicaid, and other public assistance programs) must meet acceptable statistical sampling standards including:

(i) The sampling universe must include all of the employees whose salaries and wages are to be allocated based on sample results except as provided in subsection (c);

(ii) The entire time period involved must be covered by the sample; and

(iii) The results must be statistically valid and applied to the period being sampled.

(b) Allocating charges for the sampled employees' supervisors, clerical and support staffs, based on the results of the sampled employees, will be acceptable.

(c) Less than full compliance with the statistical sampling standards noted in subsection (a) may be accepted by the cognizant agency if it concludes that the amounts to be allocated to Federal awards will be minimal, or if it concludes that the system proposed by the governmental unit will result in lower costs to Federal awards than a system which complies with the standards.

(7) Salaries and wages of employees used in meeting cost sharing or matching requirements of Federal awards must be supported in the same manner as those claimed as allowable costs under Federal awards.

i. Donated services.

(1) Donated or volunteer services may be furnished to a governmental unit by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services is not reimbursable either as a direct or indirect cost. However, the value of donated services may be used to meet cost sharing or matching

requirements in accordance with the provisions of the Common Rule.

(2) The value of donated services utilized in the performance of a direct cost activity shall, when material in amount, be considered in the determination of the governmental unit's indirect costs or rate(s) and, accordingly, shall be allocated a proportionate share of applicable indirect costs.

(3) To the extent feasible, donated services will be supported by the same methods used by the governmental unit to support the allocability of regular personnel services.

12. *Contingencies.* Contributions to a contingency reserve or any similar provision made for events the occurrence of which cannot be foretold with certainty as to time, or intensity, or with an assurance of their happening, are unallowable. The term "contingency reserve" excludes self-insurance reserves (see subsection 25.c.), pension plan reserves (see subsection 11.e.), and post-retirement health and other benefit reserves (see subsection 11.f.) computed using acceptable actuarial cost methods.

13. *Contributions and donations.* Contributions and donations, including cash, property, and services, by governmental units to others, regardless of the recipient, are unallowable.

14. *Defense and prosecution of criminal and civil proceedings, and claims.*

a. The following costs are unallowable for contracts covered by 10 U.S.C. 2324(k), "Allowable costs under defense contracts."

(1) Costs incurred in defense of any civil or criminal fraud proceeding or similar proceeding (including filing of false certification brought by the United States where the contractor is found liable or has pleaded nolo contendere to a charge of fraud or similar proceeding (including filing of a false certification).

(2) Costs incurred by a contractor in connection with any criminal, civil or administrative proceedings commenced by the United States or a State to the extent provided in 10 U.S.C. 2324(k).

b. Legal expenses required in the administration of Federal programs are allowable. Legal expenses for prosecution of claims against the Federal Government are unallowable.

15. *Depreciation and use allowances.*

a. Depreciation and use allowances are means of allocating the cost of fixed assets to periods benefitting from asset use. Compensation for the use of fixed assets on hand may be made through depreciation or use allowances. A combination of the two methods may not be used in connection with a single class of fixed assets (e.g., buildings,

office equipment, computer equipment, etc.) except as provided in subsection g. Except for enterprise funds and internal service funds that are included as part of a State/local cost allocation plan, classes of assets shall be determined on the same basis used for the government-wide financial statements.

b. The computation of depreciation or use allowances shall be based on the acquisition cost of the assets involved. Where actual cost records have not been maintained, a reasonable estimate of the original acquisition cost may be used. The value of an asset donated to the governmental unit by an unrelated third party shall be its fair market value at the time of donation. Governmental or quasi-governmental organizations located within the same State shall not be considered unrelated third parties for this purpose.

c. The computation of depreciation or use allowances will exclude:

(1) The cost of land;

(2) Any portion of the cost of buildings and equipment borne by or donated by the Federal Government irrespective of where title was originally vested or where it presently resides; and

(3) Any portion of the cost of buildings and equipment contributed by or for the governmental unit, or a related donor organization, in satisfaction of a matching requirement.

d. Where the use allowance method is followed, the use allowance for buildings and improvements (including land improvements, such as paved parking areas, fences, and sidewalks) will be computed at an annual rate not exceeding two percent of acquisition costs. The use allowance for equipment will be computed at an annual rate not exceeding 6 1/2 percent of acquisition cost. When the use allowance method is used for buildings, the entire building must be treated as a single asset; the building's components (e.g., plumbing system, heating and air condition, etc.) cannot be segregated from the building's shell. The two percent limitation, however, need not be applied to equipment which is merely attached or fastened to the building but not permanently fixed to it and which is used as furnishings or decorations or for specialized purposes (e.g., dentist chairs and dental treatment units, counters, laboratory benches bolted to the floor, dishwashers, modular furniture, carpeting, etc.). Such equipment will be considered as not being permanently fixed to the building if it can be removed without the destruction of, or need for costly or extensive alterations or repairs, to the building or the equipment. Equipment that meets these

criteria will be subject to the 6 2/3 percent equipment use allowance limitation.

e. Where the depreciation method is followed, the period of useful service (useful life) established in each case for usable capital assets must take into consideration such factors as type of construction, nature of the equipment used, historical usage patterns, technological developments, and the renewal and replacement policies of the governmental unit followed for the individual items or classes of assets involved. In the absence of clear evidence indicating that the expected consumption of the asset will be significantly greater in the early portions than in the later portions of its useful life, the straight line method of depreciation shall be used. Depreciation methods once used shall not be changed unless approved by the Federal cognizant or awarding agency. When the depreciation method is introduced for application to an asset previously subject to a use allowance, the annual depreciation charge thereon may not exceed the amount that would have resulted had the depreciation method been in effect from the date of acquisition of the asset. The combination of use allowances and depreciation applicable to the asset shall not exceed the total acquisition cost of the asset or fair market value at time of donation.

f. When the depreciation method is used for buildings, a building's shell may be segregated from the major component of the building (e.g., plumbing system, heating, and air conditioning system, etc.) and each major component depreciated over its estimated useful life, or the entire building (i.e., the shell and all components) may be treated as a single asset and depreciated over a single useful life.

g. A reasonable use allowance may be negotiated for any assets that are considered to be fully depreciated, after taking into consideration the amount of depreciation previously charged to the government, the estimated useful life remaining at the time of negotiation, the effect of any increased maintenance charges, decreased efficiency due to age, and any other factors pertinent to the utilization of the asset for the purpose contemplated.

h. Charges for use allowances or depreciation must be supported by adequate property records. Physical inventories must be taken at least once every two years (a statistical sampling approach is acceptable) to ensure that assets exist, and are in use.

Governmental units will manage equipment in accordance with State

laws and procedures. When the depreciation method is followed, depreciation records indicating the amount of depreciation taken each period must also be maintained.

16. *Disbursing service.* The cost of disbursing funds by the Treasurer or other designated officer is allowable.

17. *Employee morale, health, and welfare costs.* The costs of health or first-aid clinics and/or infirmaries, recreational facilities, employee counseling services, employee information publications, and any related expenses incurred in accordance with a governmental unit's policy are allowable. Income generated from any of these activities will be offset against expenses.

18. *Entertainment.* Costs of entertainment, including amusement, diversion, and social activities and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities) are unallowable.

19. *Equipment and other capital expenditures.*

a. As used in this section the following terms have the meanings as set forth below:

(1) "Capital expenditure" means the cost of the asset including the cost to put it in place. Capital expenditure for equipment means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in transit insurance, freight, and installation may be included in, or excluded from, capital expenditure cost in accordance with the governmental unit's regular accounting practices.

(2) "Equipment" means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals the lesser of (a) the capitalization level established by the governmental unit for financial statement purposes, or (b) \$5000.

(3) "Other capital assets" mean buildings, land, and improvements to buildings or land that materially increase their value or useful life.

b. Capital expenditures which are not charged directly to a Federal award may be recovered through use allowances or depreciation on buildings, capital improvements, and equipment (see section 15). See also section 38 for allowability of rental costs for buildings and equipment.

c. Capital expenditures for equipment, including replacement equipment, other

capital assets, and improvements which materially increase the value or useful life of equipment or other capital assets are allowable as a direct cost when approved by the awarding agency. Federal awarding agencies are authorized at their option to waive or delegate this approval requirement.

d. Items of equipment with an acquisition cost of less than \$5000 are considered to be supplies and are allowable as direct costs of Federal awards without specific awarding agency approval.

e. The unamortized portion of any equipment written off as a result of a change in capitalization levels may be recovered by (1) continuing to claim the otherwise allowable use allowances or depreciation charges on the equipment or by (2) amortizing the amount to be written off over a period of years negotiated with the cognizant agency.

f. When replacing equipment purchased in whole or in part with Federal funds, the governmental unit may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property.

20. *Fines and penalties.* Fines, penalties, damages, and other settlements resulting from violations (or alleged violations) of, or failure of the governmental unit to comply with, Federal, State, local, or Indian tribal laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of the Federal award or written instructions by the awarding agency authorizing in advance such payments.

21. *Fund raising and investment management costs.*

a. Costs of organized fund raising, including financial campaigns, solicitation of gifts and bequests, and similar expenses incurred to raise capital or obtain contributions are unallowable, regardless of the purpose for which the funds will be used.

b. Costs of investment counsel and staff and similar expenses incurred to enhance income from investments are unallowable. However, such costs associated with investments covering pension, self-insurance, or other funds which include Federal participation allowed by this Circular are allowable.

c. Fund raising and investment activities shall be allocated an appropriate share of indirect costs under the conditions described in subsection C.3.b. of Attachment A.

22. *Gains and losses on disposition of depreciable property and other capital assets and substantial relocation of Federal programs.*

a. (1) Gains and losses on the sale, retirement, or other disposition of depreciable property shall be included in the year in which they occur as credits or charges to the asset cost grouping(s) in which the property was included. The amount of the gain or loss to be included as a credit or charge to the appropriate asset cost grouping(s) shall be the difference between the amount realized on the property and the undepreciated basis of the property.

(2) Gains and losses on the disposition of depreciable property shall not be recognized as a separate credit or charge under the following conditions:

(a) The gain or loss is processed through a depreciation account and is reflected in the depreciation allowable under sections 15 and 19.

(b) The property is given in exchange as part of the purchase price of a similar item and the gain or loss is taken into account in determining the depreciation cost basis of the new item.

(c) A loss results from the failure to maintain permissible insurance, except as otherwise provided in subsection 23.d.

(d) Compensation for the use of the property was provided through use allowances in lieu of depreciation.

b. Substantial relocation of Federal awards from a facility where the Federal Government participated in the financing to another facility prior to the expiration of the useful life of the financed facility requires Federal agency approval. The extent of the relocation, the amount of the Federal participation in the financing, and the depreciation charged to date may require negotiation of space charges for Federal awards.

c. Gains or losses of any nature arising from the sale or exchange of property other than the property covered in subsection a., e.g., land or included in the fair market value used in any adjustment resulting from a relocation of Federal awards covered in subsection b. shall be excluded in computing Federal award costs.

23. General government expenses.

a. The general costs of government are unallowable (except as provided in section 41). These include:

(1) Salaries and expenses of the Office of the Governor of a State or the chief executive of a political subdivision or the chief executives of federally-recognized Indian tribal governments;

(2) Salaries and other expenses of State legislatures, tribal councils, or similar local governmental bodies, such as county supervisors, city councils, school boards, etc., whether incurred for purposes of legislation or executive direction;

(3) Cost of the judiciary branch of a government;

(4) Cost of prosecutorial activities unless treated as a direct cost to a specific program when authorized by program regulations (however, this does not preclude the allowability of other legal activities of the Attorney General); and

(5) Other general types of government services normally provided to the general public, such as fire and police, unless provided for as a direct cost in program regulations.

b. For federally-recognized Indian tribal governments and Councils Of Governments (COGs), the portion of salaries and expenses directly attributable to managing and operating Federal programs by the chief executive and his staff is allowable.

24. Idle facilities and idle capacity.

a. As used in this section the following terms have the meanings set forth below:

(1) "Facilities" means land and buildings or any portion thereof, equipment individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the governmental unit.

(2) "Idle facilities" means completely unused facilities that are excess to the governmental unit's current needs.

(3) "Idle capacity" means the unused capacity of partially used facilities. It is the difference between (a) that which a facility could achieve under 100 percent operating time on a one-shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays and (b) the extent to which the facility was actually used to meet demands during the accounting period. A multi-shift basis should be used if it can be shown that this amount of usage would normally be expected for the type of facility involved.

(4) "Cost of idle facilities or idle capacity" means costs such as maintenance, repair, housing, rent, and other related costs, e.g., insurance, interest, and depreciation or use allowances.

b. The costs of idle facilities are unallowable except to the extent that:

(1) They are necessary to meet fluctuations in workload; or

(2) Although not necessary to meet fluctuations in workload, they were necessary when acquired and are now idle because of changes in program requirements, efforts to achieve more economical operations, reorganization, termination, or other causes which could not have been reasonably foreseen. Under the exception stated in this subsection, costs of idle facilities

are allowable for a reasonable period of time, ordinarily not to exceed one year, depending on the initiative taken to use, lease, or dispose of such facilities.

c. The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or indirect cost rates from period to period. Such costs are allowable, provided that the capacity is reasonably anticipated to be necessary or was originally reasonable and is not subject to reduction or elimination by use on other Federal awards, subletting, renting, or sale, in accordance with sound business, economic, or security practices. Widespread idle capacity throughout an entire facility or among a group of assets having substantially the same function may be considered idle facilities.

25. Insurance and indemnification.

a. Costs of insurance required or approved and maintained, pursuant to the Federal award, are allowable.

b. Costs of other insurance in connection with the general conduct of activities are allowable subject to the following limitations:

(1) Types and extent and cost of coverage are in accordance with the governmental unit's policy and sound business practice.

(2) Costs of insurance or of contributions to any reserve covering the risk of loss of, or damage to, Federal Government property are unallowable except to the extent that the awarding agency has specifically required or approved such costs.

c. Actual losses which could have been covered by permissible insurance (through a self-insurance program or otherwise) are unallowable, unless expressly provided for in the Federal award or as described below. However, the Federal Government will participate in actual losses of a self insurance fund that are in excess of reserves. Costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice, and minor losses not covered by insurance, such as spoilage, breakage, and disappearance of small hand tools, which occur in the ordinary course of operations, are allowable.

d. Contributions to a reserve for certain self-insurance programs including workers compensation, unemployment compensation, and severance pay are allowable subject to the following provisions:

(1) The type of coverage and the extent of coverage and the rates and premiums would have been allowed had insurance (including reinsurance) been purchased to cover the risks.

However, provision for known or reasonably estimated self-insured liabilities, which do not become payable for more than one year after the provision is made, shall not exceed the discounted present value of the liability. The rate used for discounting the liability must be determined by giving consideration to such factors as the governmental unit's settlement rate for those liabilities and its investment rate of return.

(2) Earnings or investment income on reserves must be credited to those reserves.

(3) Contributions to reserves must be based on sound actuarial principles using historical experience and reasonable assumptions. Reserve levels must be analyzed and updated at least biennially for each major risk being insured and take into account any reinsurance, comsureance, etc. Reserve levels related to employee-related coverages will normally be limited to the value of claims (a) submitted and adjudicated but not paid, (b) submitted but not adjudicated, and (c) incurred but not submitted. Reserve levels in excess of the amounts based on the above must be identified and justified in the cost allocation plan or indirect cost rate proposal.

(4) Accounting records, actuarial studies, and cost allocations (or billings) must recognize any significant differences due to types of insured risk and losses generated by the various insured activities or agencies of the governmental unit. If individual departments or agencies of the governmental unit experience significantly different levels of claims for a particular risk, those differences are to be recognized by the use of separate allocations or other techniques resulting in an equitable allocation.

(5) Whenever funds are transferred from a self-insurance reserve to other accounts (e.g., general fund), refunds shall be made to the Federal Government for its share of funds transferred, including earned or imputed interest from the date of transfer.

e. Actual claims paid to or on behalf of employees or former employees for workers' compensation, unemployment compensation, severance pay, and similar employee benefits (e.g., subsection 11.f. for post retirement health benefits), are allowable in the year of payment provided (1) the governmental unit follows a consistent costing policy and (2) they are allocated as a general administrative expense to all activities of the governmental unit.

f. Insurance refunds shall be credited against insurance costs in the year the refund is received.

g. Indemnification includes securing the governmental unit against liabilities to third persons and other losses not compensated by insurance or otherwise. The Federal Government is obligated to indemnify the governmental unit only to the extent expressly provided for in the Federal award, except as provided in subsection d.

h. Costs of commercial insurance that protects against the costs of the contractor for correction of the contractor's own defects in materials or workmanship are unallowable.

26. Interest.

a. Costs incurred for interest on borrowed capital or the use of a governmental unit's own funds, however represented, are unallowable except as specifically provided in subsection b. or authorized by Federal legislation.

b. Financing costs (including interest) paid or incurred on or after the effective date of this Circular associated with the otherwise allowable costs of building acquisition, construction, or fabrication, reconstruction or remodeling completed on or after October 1, 1980 is allowable, subject to the conditions in (1)-(4). Financing costs (including interest) paid or incurred on or after the effective date of this Circular associated with otherwise allowable costs of equipment is allowable, subject to the conditions in (1)-(4).

(1) The financing is provided (from other than tax or user fee sources) by a bona fide third party external to the governmental unit.

(2) The assets are used in support of Federal awards.

(3) Earnings on debt service reserve funds or interest earned on borrowed funds pending payment of the construction or acquisition costs are used to offset the current period's cost or the capitalized interest, as appropriate. Earnings subject to being reported to the Federal Internal Revenue Service under arbitrage requirements are excludable.

(4) Governmental units will negotiate the amount of allowable interest whenever cash payments (interest, depreciation, use allowances, and contributions) exceed the governmental unit's cash payments and other contributions attributable to that portion of real property used for Federal awards.

27. *Lobbying.* The cost of certain influencing activities associated with obtaining grants, contracts, cooperative agreements, or loans is an unallowable cost. Lobbying with respect to certain grants, contracts, cooperative

agreements, and loans shall be governed by the common rule, "New Restrictions on Lobbying" published at 55 FR 6736 (February 26, 1990), including definitions, and the Office of Management and Budget "Government-wide Guidance for New Restrictions on Lobbying" and notices published at 54 FR 52306 (December 20, 1989), 55 FR 24540 (June 15, 1990), and 57 FR 1772 (January 15, 1992), respectively.

28. *Maintenance, operations, and repairs.* Unless prohibited by law, the cost of utilities, insurance, security, janitorial services, elevator service, upkeep of grounds, necessary maintenance, normal repairs and alterations, and the like are allowable to the extent that they: (1) keep property (including Federal property, unless otherwise provided for) in an efficient operating condition, (2) do not add to the permanent value of property or appreciably prolong its intended life, and (3) are not otherwise included in rental or other charges for space. Costs which add to the permanent value of property or appreciably prolong its intended life shall be treated as capital expenditures (see sections 15 and 19).

29. *Materials and supplies.* The cost of materials and supplies is allowable. Purchases should be charged at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received. Withdrawals from general stores or stockrooms should be charged at cost under any recognized method of pricing, consistently applied. Incoming transportation charges are a proper part of materials and supply costs.

30. *Memberships, subscriptions, and professional activities.*

a. Costs of the governmental unit's memberships in business, technical, and professional organizations are allowable.

b. Costs of the governmental unit's subscriptions to business, professional and technical periodicals are allowable.

c. Costs of meetings and conferences where the primary purpose is the dissemination of technical information including meals, transportation, rental of meeting facilities, and other incidental costs are allowable.

d. Costs of membership in civic and community, social organizations are allowable as a direct cost with the approval of the Federal awarding agency.

e. Costs of membership in organizations substantially engaged in lobbying are unallowable.

31. *Motor pools.* The costs of a service organization which provides automobiles to user governmental units at a mileage or fixed rate and/or

provides vehicle maintenance, inspection, and repair services are allowable.

32. Pre-award costs. Pre-award costs are those incurred prior to the effective date of the award directly pursuant to the negotiation and in anticipation of the award where such costs are necessary to comply with the proposed delivery schedule or period of performance. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the award and only with the written approval of the awarding agency.

33. Professional service costs.

a. Cost of professional and consultant services rendered by persons or organizations that are members of a particular profession or possess a special skill, whether or not officers or employees of the governmental unit, are allowable, subject to section 14 when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Federal Government.

b. Retainer fees supported by evidence of bona fide services available or rendered are allowable.

34. Proposal costs. Costs of preparing proposals for potential Federal awards are allowable. Proposal costs should normally be treated as indirect costs and should be allocated to all activities of the governmental unit utilizing the cost allocation plan and indirect cost rate proposal. However, proposal costs may be charged directly to Federal awards with the prior approval of the Federal awarding agency.

35. Publication and printing costs. Publication costs, including the costs of printing (including the processes of composition, plate-making, press work, and binding, and the end products produced by such processes), distribution, promotion, mailing, and general handling are allowable.

36. Rearrangements and alterations. Costs incurred for ordinary and normal rearrangement and alteration of facilities are allowable. Special arrangements and alterations costs incurred specifically for a Federal award are allowable with the prior approval of the Federal awarding agency.

37. Reconversion costs. Costs incurred in the restoration or rehabilitation of the governmental unit's facilities to approximately the same condition existing immediately prior to commencement of Federal awards, less costs related to normal wear and tear, are allowable.

38. Rental costs.

a. Subject to the limitations described in subsections b. through d. of this section, rental costs are allowable to the

extent that the rates are reasonable in light of such factors as: rental costs of comparable property, if any; market conditions in the area; alternatives available; and, the type, life expectancy, condition, and value of the property leased.

b. Rental costs under sale and leaseback arrangements are allowable only up to the amount that would be allowed had the governmental unit continued to own the property.

c. Rental costs under less-than-arms-length leases are allowable only up to the amount that would be allowed had title to the property vested in the governmental unit. For this purpose, less-than-arms-length leases include, but are not limited to, those where:

(1) One party to the lease is able to control or substantially influence the actions of the other;

(2) Both parties are parts of the same governmental unit; or

(3) The governmental unit creates an authority or similar entity to acquire and lease the facilities to the governmental unit and other parties.

d. Rental costs under leases which are required to be treated as capital leases under GAAP are allowable only up to the amount that would be allowed had the governmental unit purchased the property on the date the lease agreement was executed. This amount would include expenses such as depreciation or use allowance, maintenance, and insurance. The provisions of Financial Accounting Standards Board Statement 13 shall be used to determine whether a lease is a capital lease. Interest costs related to capital leases are allowable to the extent they meet the criteria in section 26.

39. Taxes.

a. Taxes that a governmental unit is legally required to pay are allowable, except for self-assessed taxes that disproportionately affect Federal programs or changes in tax policies that disproportionately affect Federal programs. This provision becomes effective for taxes paid during the governmental unit's first fiscal year that begins on or after January 1, 1998, and applies thereafter.

b. Gasoline taxes, motor vehicle fees, and other taxes that are in effect user fees for benefits provided to the Federal Government are allowable.

c. This provision does not restrict the authority of Federal agencies to identify taxes where Federal participation is inappropriate. Where the identification of the amount of unallowable taxes would require an inordinate amount of effort, the cognizant agency may accept a reasonable approximation thereof.

40. Training. The cost of training provided for employee development is allowable.

41. Travel costs.

a. *General.* Travel costs are allowable for expenses for transportation, lodging, subsistence, and related items incurred by employees traveling on official business. Such costs may be charged on an actual cost basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip, and results in charges consistent with those normally allowed in like circumstances in non-federally-sponsored activities.

Notwithstanding the provisions of section 23, travel costs of officials covered by that section, when specifically related to Federal awards, are allowable with the prior approval of a grantor agency.

b. *Lodging and subsistence.* Costs incurred by employees and officers for travel, including costs of lodging, other subsistence, and incidental expenses, shall be considered reasonable and allowable only to the extent such costs do not exceed charges normally allowed by the governmental unit in its regular operations as a result of the governmental unit's policy. In the absence of a written governmental unit policy regarding travel costs, the rates and amounts established under subchapter I of Chapter 57 of Title 5, United States Code "Travel and Subsistence Expenses: Mileage Allowances," or by the Administrator of General Services, or the President (or his designee) pursuant to any provisions of such subchapter shall be used as guidance for travel under Federal awards (41 U.S.C. 420, "Travel Expenses of Government Contractors").

c. *Commercial air travel.* Airfare costs in excess of the customary standard (coach or equivalent) airfare, are unallowable except when such accommodations would: require circuitous routing, require travel during unreasonable hours, excessively prolong travel, greatly increase the duration of the flight, result in increased cost that would offset transportation savings, or offer accommodations not reasonably adequate for the medical needs of the traveler. Where a governmental unit can reasonably demonstrate to the awarding agency either the nonavailability of customary standard airfare or Federal Government contract airfare for individual trips or, on an overall basis, that it is the governmental unit's practice to make routine use of such airfare, specific determinations of nonavailability will generally not be questioned by the Federal Government.

unless a pattern of avoidance is detected. However, in order for airfare costs in excess of the customary standard commercial airfare to be allowable, e.g., use of first-class airfare, the governmental unit must justify and document on a case-by-case basis the applicable condition(s) set forth above.

d. *Air travel by other than commercial carrier.* Cost of travel by governmental unit-owned, -leased, or -chartered aircraft, as used in this section, includes the cost of lease, charter, operation (including personnel costs), maintenance, depreciation, interest, insurance, and other related costs. Costs of travel via governmental unit-owned, -leased, or -chartered aircraft are unallowable to the extent they exceed the cost of allowable commercial air travel, as provided for in subsection c.

42. *Underrecovery of costs under Federal agreements.* Any excess costs over the Federal contribution under one award agreement are unallowable under other award agreements.

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A. General

1. Most governmental units provide certain services, such as motor pools, computer centers, purchasing, accounting, etc., to operating agencies on a centralized basis. Since federally-supported awards are performed within the individual operating agencies, there needs to be a process whereby these central service costs can be identified and assigned to benefitted activities on a reasonable and consistent basis. The central service cost allocation plan provides that process. All costs and

other data used to distribute the costs included in the plan should be supported by formal accounting and other records that will support the propriety of the costs assigned to Federal awards.

2. Guidelines and illustrations of central service cost allocation plans are provided in a brochure published by the Department of Health and Human Services entitled "A Guide for State and Local Government Agencies: Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government." A copy of this brochure may be obtained from the Superintendent of Documents, U.S. Government Printing Office.

B. Definitions

1. "Billed central services" means central services that are billed to benefitted agencies and/or programs on an individual fee-for-service or similar basis. Typical examples of billed central services include computer services, transportation services, insurance, and fringe benefits.

2. "Allocated central services" means central services that benefit operating agencies but are not billed to the agencies on a fee-for-service or similar basis. These costs are allocated to benefitted agencies on some reasonable basis. Examples of such services might include general accounting, personnel administration, purchasing, etc.

3. "Agency or operating agency" means an organizational unit or subdivision within a governmental unit that is responsible for the performance or administration of awards or activities of the governmental unit.

C. Scope of the Central Service Cost Allocation Plans

The central service cost allocation plan will include all central service costs that will be claimed (either as a billed or an allocated cost) under Federal awards and will be documented as described in section E. Costs of central services omitted from the plan will not be reimbursed.

D. Submission Requirements

1. Each State will submit a plan to the Department of Health and Human Services for each year in which it claims central service costs under Federal awards. The plan should include (a) a projection of the next year's allocated central service cost (based either on actual costs for the most recently completed year or the budget projection for the coming year), and (b) a reconciliation of actual allocated central

service costs to the estimated costs used for either the most recently completed year or the year immediately preceding the most recently completed year.

2. Each local government that has been designated as a "major local government" by the Office of Management and Budget (OMB) is also required to submit a plan to its cognizant agency annually. OMB periodically lists major local governments in the *Federal Register*.

3. All other local governments claiming central service costs must develop a plan in accordance with the requirements described in this Circular and maintain the plan and related supporting documentation for audit. These local governments are not required to submit their plans for Federal approval unless they are specifically requested to do so by the cognizant agency. Where a local government only receives funds as a sub-recipient, the primary recipient will be responsible for negotiating indirect cost rates and/or monitoring the sub-recipient's plan.

4. All central service cost allocation plans will be prepared and, when required, submitted within six months prior to the beginning of each of the governmental unit's fiscal years in which it proposes to claim central service costs. Extensions may be granted by the cognizant agency on a case-by-case basis.

E. Documentation Requirements for Submitted Plans

The documentation requirements described in this section may be modified, expanded, or reduced by the cognizant agency on a case-by-case basis. For example, the requirements may be reduced for those central services which have little or no impact on Federal awards. Conversely, if a review of a plan indicates that certain additional information is needed, and will likely be needed in future years, it may be routinely requested in future plan submissions. Items marked with an asterisk (*) should be submitted only once; subsequent plans should merely indicate any changes since the last plan.

1. *General.* All proposed plans must be accompanied by the following: an organization chart sufficiently detailed to show operations including the central service activities of the State/local government whether or not they are shown as benefiting from central service functions; a copy of the Comprehensive Annual Financial Report (or a copy of the Executive Budget if budgeted costs are being proposed) to support the allowable costs of each central service activity included in the plan; and, a

certification (see subsection 4.) that the plan was prepared in accordance with this Circular, contains only allowable costs, and was prepared in a manner that treated similar costs consistently among the various Federal awards and between Federal and non-Federal awards/activities.

2. *Allocated central services.* For each allocated central service, the plan must also include the following: a brief description of the service*; an identification of the unit rendering the service and the operating agencies receiving the service, the items of expense included in the cost of the service, the method used to distribute the cost of the service to benefitted agencies, and a summary schedule showing the allocation of each service to the specific benefitted agencies. If any self-insurance funds or fringe benefits costs are treated as allocated (rather than billed) central services, documentation discussed in subsections 3.b. and c. shall also be included.

3. *Billed services.*

a. *General.* The information described below shall be provided for all billed central services, including internal service funds, self-insurance funds, and fringe benefit funds.

b. *Internal service funds.*

(1) For each internal service fund or similar activity with an operating budget of \$5 million or more, the plan shall include: a brief description of each service; a balance sheet for each fund based on individual accounts contained in the governmental unit's accounting system; a revenue/expenses statement, with revenues broken out by source, e.g., regular billings, interest earned, etc.; a listing of all non-operating transfers (as defined by Generally Accepted Accounting Principles (GAAP)) into and out of the fund; a description of the procedures (methodology) used to charge the costs of each service to users, including how billing rates are determined; a schedule of current rates; and, a schedule comparing total revenues (including imputed revenues) generated by the service to the allowable costs of the service, as determined under this Circular, with an explanation of how variances will be handled.

(2) Revenues shall consist of all revenues generated by the service, including unbilled and uncollected revenues. If some users were not billed for the services (or were not billed at the full rate for that class of users), a schedule showing the full imputed revenues associated with these users shall be provided. Expenses shall be broken out by object cost categories (e.g., salaries, supplies, etc.).

c. *Self-insurance funds.* For each self-insurance fund, the plan shall include: the fund balance sheet; a statement of revenue and expenses including a summary of billings and claims paid by agency; a listing of all non-operating transfers into and out of the fund; the type(s) of risk(s) covered by the fund (e.g., automobile liability, workers' compensation, etc.); an explanation of how the level of fund contributions are determined, including a copy of the current actuarial report (with the actuarial assumptions used) if the contributions are determined on an actuarial basis; and, a description of the procedures used to charge or allocate fund contributions to benefitted activities. Reserve levels in excess of claims (1) submitted and adjudicated but not paid, (2) submitted but not adjudicated, and (3) incurred but not submitted must be identified and explained.

d. *Fringe benefits.* For fringe benefit costs, the plan shall include: a listing of fringe benefits provided to covered employees, and the overall annual cost of each type of benefit; current fringe benefit policies*; and procedures used to charge or allocate the costs of the benefits to benefitted activities. In addition, for pension and post-retirement health insurance plans, the following information shall be provided: the governmental unit's funding policies, e.g., legislative bills, trust agreements, or State-mandated contribution rules, if different from actuarially determined rates; the pension plan's costs accrued for the year; the amount funded, and date(s) of funding; a copy of the current actuarial report (including the actuarial assumptions); the plan trustee's report; and, a schedule from the activity showing the value of the interest cost associated with late funding.

4. *Required certification.* Each central service cost allocation plan will be accompanied by a certification in the following form:

Certificate of Cost Allocation Plan

This is to certify that I have reviewed the cost allocation plan submitted herewith and to the best of my knowledge and belief:

(1) All costs included in this proposal (identify date) to establish cost allocations or billings for (identify period covered by plan) are allowable in accordance with the requirements of OMB Circular A-87, "Cost Principles for State and Local Governments," and the Federal award(s) to which they apply. Unallowable costs have been adjusted for in allocating costs as indicated in the cost allocation plan.

(2) All costs included in this proposal are properly allocable to Federal awards on the basis of a beneficial or causal relationship between the expenses incurred and the

awards to which they are allocated in accordance with applicable requirements. Further, the same costs that have been treated as indirect costs have not been claimed as direct costs. Similar types of costs have been accounted for consistently.

I declare that the foregoing is true and correct.

Governmental Unit _____

Signature _____

Name of Official _____

Title _____

Date of Execution _____

F. Negotiation and Approval of Central Service Plans

1. All proposed central service cost allocation plans that are required to be submitted will be reviewed, negotiated, and approved by the Federal cognizant agency on a timely basis. The cognizant agency will review the proposal within six months of receipt of the proposal and either negotiate/approve the proposal or advise the governmental unit of the additional documentation needed to support/evaluate the proposed plan or the changes required to make the proposal acceptable. Once an agreement with the governmental unit has been reached, the agreement will be accepted and used by all Federal agencies, unless prohibited or limited by statute. Where a Federal funding agency has reason to believe that special operating factors affecting its awards necessitate special consideration, the funding agency will, prior to the time the plans are negotiated, notify the cognizant agency.

2. The results of each negotiation shall be formalized in a written agreement between the cognizant agency and the governmental unit. This agreement will be subject to re-opening if the agreement is subsequently found to violate a statute or the information upon which the plan was negotiated is later found to be materially incomplete or inaccurate. The results of the negotiation shall be made available to all Federal agencies for their use.

3. Negotiated cost allocation plans based on a proposal later found to have included costs that: (a) are unallowable (i) as specified by law or regulation, (ii) as identified in Attachment B of this Circular, or (iii) by the terms and conditions of Federal awards, or (b) are unallowable because they are clearly not allocable to Federal awards, shall be adjusted, or a refund shall be made at the option of the Federal cognizant agency. These adjustments or refunds are designed to correct the plans and do not constitute a reopening of the negotiation.

G. Other Policies

1. *Billed central service activities.* Each billed central service activity must separately account for all revenues (including imputed revenues) generated by the service, expenses incurred to furnish the service, and profit/loss.

2. *Working capital reserves.* Internal service funds are dependent upon a reasonable level of working capital reserve to operate from one billing cycle to the next. Charges by an internal service activity to provide for the establishment and maintenance of a reasonable level of working capital reserve, in addition to the full recovery of costs, are allowable. A working capital reserve as part of retained earnings of up to 60 days cash expenses for normal operating purposes is considered reasonable. A working capital reserve exceeding 60 days may be approved by the cognizant Federal agency in exceptional cases.

3. *Carry-forward adjustments of allocated central service costs.* Allocated central service costs are usually negotiated and approved for a future fiscal year on a "fixed with carry-forward" basis. Under this procedure, the fixed amounts for the future year covered by agreement are not subject to adjustment for that year. However, when the actual costs of the year involved become known, the differences between the fixed amounts previously approved and the actual costs will be carried forward and used as an adjustment to the fixed amounts established for a later year. This "carry-forward" procedure applies to all central services whose costs were fixed in the approved plan. However, a carry-forward adjustment is not permitted for a central service activity that was not included in the approved plan, or for unallowable costs that must be reimbursed immediately.

4. *Adjustments of billed central services.* Billing rates used to charge Federal awards shall be based on the estimated costs of providing the services, including an estimate of the allocable central service costs. A comparison of the revenue generated by each billed service (including total revenues whether or not billed or collected) to the actual allowable costs of the service will be made at least annually, and an adjustment will be made for the difference between the revenue and the allowable costs. These adjustments will be made through one of the following adjustment methods: (a) a cash refund to the Federal Government for the Federal share of the adjustment, (b) credits to the amounts charged to the individual programs, (c)

adjustments to future billing rates, or (d) adjustments to allocated central service costs. Adjustments to allocated central services will not be permitted where the total amount of the adjustment for a particular service (Federal share and non-Federal) share exceeds \$500,000.

5. *Records retention.* All central service cost allocation plans and related documentation used as a basis for claiming costs under Federal awards must be retained for audit in accordance with the records retention requirements contained in the Common Rule.

6. *Appeals.* If a dispute arises in the negotiation of a plan between the cognizant agency and the governmental unit, the dispute shall be resolved in accordance with the appeals procedures of the cognizant agency.

7. *OMB assistance.* To the extent that problems are encountered among the Federal agencies and/or governmental units in connection with the negotiation and approval process, OMB will lend assistance, as required, to resolve such problems in a timely manner.

Attachment D—Public Assistance Cost Allocation Plans**Table of Contents**

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- E. Review of Implementation of Approved Plans
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A. General

Federally-financed programs administered by State public assistance agencies are funded predominately by the Department of Health and Human Services (HHS). In support of its stewardship requirements, HHS has published requirements for the development, documentation, submission, negotiation, and approval of public assistance cost allocation plans in Subpart E of 45 CFR Part 95. All administrative costs (direct and indirect) are normally charged to Federal awards by implementing the public assistance cost allocation plan. This Attachment extends these requirements to all Federal agencies whose programs are administered by a State public assistance agency. Major federally-financed programs typically administered by State public assistance agencies include: Aid to Families with Dependent Children, Medicaid, Food Stamps, Child Support Enforcement, Adoption Assistance and Foster Care, and Social Services Block Grant.

B. Definitions

1. "State public assistance agency" means a State agency administering or supervising the administration of one or more public assistance programs operated by the State as identified in Subpart E of 45 CFR Part 95. For the purpose of this Attachment, these programs include all programs administered by the State public assistance agency.

2. "State public assistance agency costs" means all costs incurred by, or allocable to, the State public assistance agency, except expenditures for financial assistance, medical vendor payments, food stamps, and payments for services and goods provided directly to program recipients.

C. Policy

State public assistance agencies will develop, document and implement, and the Federal Government will review, negotiate, and approve, public assistance cost allocation plans in accordance with Subpart E of 45 CFR Part 95. The plan will include all programs administered by the State public assistance agency. Where a letter of approval or disapproval is transmitted to a State public assistance agency in accordance with Subpart E, the letter will apply to all Federal agencies and programs. The remaining sections of this Attachment (except for the requirement for certification) summarize the provisions of Subpart E of 45 CFR Part 95.

D. Submission, Documentation, and Approval of Public Assistance Cost Allocation Plans

1. State public assistance agencies are required to promptly submit amendments to the cost allocation plan to HHS for review and approval.

2. Under the coordination process outlined in subsection E, affected Federal agencies will review all new plans and plan amendments and provide comments, as appropriate, to HHS. The effective date of the plan or plan amendment will be the first day of the quarter following the submission of the plan or amendment, unless another date is specifically approved by HHS. HHS, as the cognizant agency acting on behalf of all affected Federal agencies, will, as necessary, conduct negotiations with the State public assistance agency and will inform the State agency of the action taken on the plan or plan amendment.

E. Review of Implementation of Approved Plans

1. Since public assistance cost allocation plans are of a narrative

nature, the review during the plan approval process consists of evaluating the appropriateness of the proposed groupings of costs (cost centers) and the related allocation bases. As such, the Federal Government needs some assurance that the cost allocation plan has been implemented as approved. This is accomplished by reviews by the funding agencies, single audits, or audits conducted by the cognizant audit agency.

2. Where inappropriate charges affecting more than one funding agency are identified, the cognizant HHS cost negotiation office will be advised and will take the lead in resolving the issue(s) as provided for in Subpart E of 45 CFR Part 95.

3. If a dispute arises in the negotiation of a plan or from a disallowance involving two or more funding agencies, the dispute shall be resolved in accordance with the appeals procedures set out in 45 CFR Part 95. Disputes involving only one funding agency will be resolved in accordance with the funding agency's appeal process.

4. To the extent that problems are encountered among the Federal agencies and/or governmental units in connection with the negotiation and approval process, the Office of Management and Budget will lend assistance, as required, to resolve such problems in a timely manner.

F. Unallowable Costs

Claims developed under approved cost allocation plans will be based on allowable costs as identified in this Circular. Where unallowable costs have been claimed and reimbursed, they will be refunded to the program that reimbursed the unallowable cost using one of the following methods: (a) a cash refund, (b) offset to a subsequent claim, or (c) credits to the amounts charged to individual awards.

Attachment E—State and Local Indirect Cost Rate Proposals

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A. General

1. Indirect costs are those that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned directly to Federal awards and other activities as appropriate, indirect costs are those remaining to be allocated to benefitted cost objectives. A cost may not be allocated to a Federal award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to a Federal award as a direct cost.

2. Indirect costs include (a) the indirect costs originating in each department or agency of the governmental unit carrying out Federal awards and (b) the costs of central governmental services distributed through the central service cost allocation plan (as described in Attachment C) and not otherwise treated as direct costs.

3. Indirect costs are normally charged to Federal awards by the use of an indirect cost rate. A separate indirect cost rate(s) is usually necessary for each department or agency of the governmental unit claiming indirect costs under Federal awards. Guidelines and illustrations of indirect cost proposals are provided in a brochure published by the Department of Health and Human Services entitled "A Guide for State and Local Government Agencies: Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government." A copy of this brochure may be obtained from the Superintendent of Documents, U.S. Government Printing Office.

4. Because of the diverse characteristics and accounting practices of governmental units, the types of costs which may be classified as indirect

costs cannot be specified in all situations. However, typical examples of indirect costs may include certain State/local-wide central service costs, general administration of the grantee department or agency, accounting and personnel services performed within the grantee department or agency, depreciation or use allowances on buildings and equipment, the costs of operating and maintaining facilities, etc.

5. This Attachment does not apply to State public assistance agencies. These agencies should refer instead to Attachment D.

B. Definitions

1. "Indirect cost rate proposal" means the documentation prepared by a governmental unit or subdivision thereof to substantiate its request for the establishment of an indirect cost rate.

2. "Indirect cost rate" is a device for determining in a reasonable manner the proportion of indirect costs each program should bear. It is the ratio (expressed as a percentage) of the indirect costs to a direct cost base.

3. "Indirect cost pool" is the accumulated costs that jointly benefit two or more programs or other cost objectives.

4. "Base" means the accumulated direct costs (normally either total direct salaries and wages or total direct costs exclusive of any extraordinary or distorting expenditures) used to distribute indirect costs to individual Federal awards. The direct cost base selected should result in each award bearing a fair share of the indirect costs in reasonable relation to the benefits received from the costs.

5. "Predetermined rate" means an indirect cost rate, applicable to a specified current or future period, usually the governmental unit's fiscal year. This rate is based on an estimate of the costs to be incurred during the period. Except under very unusual circumstances, a predetermined rate is not subject to adjustment. (Because of legal constraints, predetermined rates are not permitted for Federal contracts; they may, however, be used for grants or cooperative agreements.) Predetermined rates may not be used by governmental units that have not submitted and negotiated the rate with the cognizant agency. In view of the potential advantages offered by this procedure, negotiation of predetermined rates for indirect costs for a period of two to four years should be the norm in those situations where the cost experience and other pertinent facts available are deemed sufficient to enable the parties involved to reach an informed judgment as to the probable

level of indirect costs during the ensuing accounting periods.

6. "Fixed rate" means an indirect cost rate which has the same characteristics as a predetermined rate, except that the difference between the estimated costs and the actual, allowable costs of the period covered by the rate is carried forward as an adjustment to the rate computation of a subsequent period.

7. "Provisional rate" means a temporary indirect cost rate applicable to a specified period which is used for funding, interim reimbursement, and reporting indirect costs on Federal awards pending the establishment of a "final" rate for that period.

8. "Final rate" means an indirect cost rate applicable to a specified past period which is based on the actual allowable costs of the period. A final audited rate is not subject to adjustment.

9. "Base period" for the allocation of indirect costs is the period in which such costs are incurred and accumulated for allocation to activities performed in that period. The base period normally should coincide with the governmental unit's fiscal year, but in any event, shall be so selected as to avoid inequities in the allocation of costs.

C. Allocation of Indirect Costs and Determination of Indirect Cost Rates

1. General.

a. Where a governmental unit's department or agency has only one major function, or where all its major functions benefit from the indirect costs to approximately the same degree, the allocation of indirect costs and the computation of an indirect cost rate may be accomplished through simplified allocation procedures as described in subsection 2.

b. Where a governmental unit's department or agency has several major functions which benefit from its indirect costs in varying degrees, the allocation of indirect costs may require the accumulation of such costs into separate cost groupings which then are allocated individually to benefitted functions by means of a base which best measures the relative degree of benefit. The indirect costs allocated to each function are then distributed to individual awards and other activities included in that function by means of an indirect cost rate(s).

c. Specific methods for allocating indirect costs and computing indirect cost rates along with the conditions under which each method should be used are described in subsections 2, 3 and 4.

2. Simplified method.

a. Where a grantee agency's major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs may be accomplished by (1) classifying the grantee agency's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to individual Federal awards. The rate should be expressed as the percentage which the total amount of allowable indirect costs bears to the base selected. This method should also be used where a governmental unit's department or agency has only one major function encompassing a number of individual projects or activities, and may be used where the level of Federal awards to that department or agency is relatively small.

b. Both the direct costs and the indirect costs shall exclude capital expenditures and unallowable costs. However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

c. The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

3. Multiple allocation base method.

a. Where a grantee agency's indirect costs benefit its major functions in varying degrees, such costs shall be accumulated into separate cost groupings. Each grouping shall then be allocated individually to benefitted functions by means of a base which best measures the relative benefits.

b. The cost groupings should be established so as to permit the allocation of each grouping on the basis of benefits provided to the major functions. Each grouping should constitute a pool of expenses that are of like character in terms of the functions they benefit and in terms of the allocation base which best measures the relative benefits provided to each function. The number of separate groupings should be held within practical limits, taking into consideration the materiality of the amounts involved and the degree of precision needed.

c. Actual conditions must be taken into account in selecting the base to be used in allocating the expenses in each grouping to benefitted functions. When an allocation can be made by assignment of a cost grouping directly to

the function benefitted, the allocation shall be made in that manner. When the expenses in a grouping are more general in nature, the allocation should be made through the use of a selected base which produces results that are equitable to both the Federal Government and the governmental unit. In general, any cost element or related factor associated with the governmental unit's activities is potentially adaptable for use as an allocation base provided that: (1) it can readily be expressed in terms of dollars or other quantitative measures (total direct costs, direct salaries and wages, staff hours applied, square feet used, hours of usage, number of documents processed, population served, and the like), and (2) it is common to the benefitted functions during the base period.

d. Except where a special indirect cost rate(s) is required in accordance with subsection 4, the separate groupings of indirect costs allocated to each major function shall be aggregated and treated as a common pool for that function. The costs in the common pool shall then be distributed to individual Federal awards included in that function by use of a single indirect cost rate.

e. The distribution base used in computing the indirect cost rate for each function may be (1) total direct costs (excluding capital expenditures and other distorting items such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution. An indirect cost rate should be developed for each separate indirect cost pool developed. The rate in each case should be stated as the percentage relationship between the particular indirect cost pool and the distribution base identified with that pool.

4. Special indirect cost rates.

a. In some instances, a single indirect cost rate for all activities of a grantee department or agency or for each major function of the agency may not be appropriate. It may not take into account those different factors which may substantially affect the indirect costs applicable to a particular program or group of programs. The factors may include the physical location of the work, the level of administrative support required, the nature of the facilities or other resources employed, the organizational arrangements used, or any combination thereof. When a particular award is carried out in an environment which appears to generate a significantly different level of indirect costs, provisions should be made for a separate indirect cost pool applicable to that award. The separate indirect cost

pool should be developed during the course of the regular allocation process, and the separate indirect cost rate resulting therefrom should be used, provided that: (1) the rate differs significantly from the rate which would have been developed under subsections 2. and 3., and (2) the award to which the rate would apply is material in amount.

b. Although this Circular adopts the concept of the full allocation of indirect costs, there are some Federal statutes which restrict the reimbursement of certain indirect costs. Where such restrictions exist, it may be necessary to develop a special rate for the affected award. Where a "restricted rate" is required, the procedure for developing a non-restricted rate will be used except for the additional step of the elimination from the indirect cost pool those costs for which the law prohibits reimbursement.

D. Submission and Documentation of Proposals

1. Submission of indirect cost rate proposals.

a. All departments or agencies of the governmental unit desiring to claim indirect costs under Federal awards must prepare an indirect cost rate proposal and related documentation to support those costs. The proposal and related documentation must be retained for audit in accordance with the records retention requirements contained in the Common Rule.

b. A governmental unit for which a cognizant agency assignment has been specifically designated must submit its indirect cost rate proposal to its cognizant agency. The Office of Management and Budget (OMB) will periodically publish lists of governmental units identifying the appropriate Federal cognizant agencies. The cognizant agency for all governmental units or agencies not identified by OMB will be determined based on the Federal agency providing the largest amount of Federal funds. In these cases, a governmental unit must develop an indirect cost proposal in accordance with the requirements of this Circular and maintain the proposal and related supporting documentation for audit. These governmental units are not required to submit their proposals unless they are specifically requested to do so by the cognizant agency. Where a local government only receives funds as a sub-recipient, the primary recipient will be responsible for negotiating and/or monitoring the sub-recipient's plan.

c. Each Indian tribal government desiring reimbursement of indirect costs must submit its indirect cost proposal to

the Department of the Interior (its cognizant Federal agency).

d. Indirect cost proposals must be developed (and, when required, submitted) within six months after the close of the governmental unit's fiscal year, unless an exception is approved by the cognizant Federal agency. If the proposed central service cost allocation plan for the same period has not been approved by that time, the indirect cost proposal may be prepared including an amount for central services that is based on the latest federally-approved central service cost allocation plan. The difference between these central service amounts and the amounts ultimately approved will be compensated for by an adjustment in a subsequent period.

2. *Documentation of proposals.* The following shall be included with each indirect cost proposal:

a. The rates proposed, including subsidiary work sheets and other relevant data, cross referenced and reconciled to the financial data noted in subsection b. Allocated central service costs will be supported by the summary table included in the approved central service cost allocation plan. This summary table is not required to be submitted with the indirect cost proposal if the central service cost allocation plan for the same fiscal year has been approved by the cognizant agency and is available to the funding agency.

b. A copy of the financial data (financial statements, comprehensive annual financial report, executive budgets, accounting reports, etc.) upon which the rate is based. Adjustments resulting from the use of unaudited data will be recognized, where appropriate, by the Federal cognizant agency in a subsequent proposal.

c. The approximate amount of direct base costs incurred under Federal awards. These costs should be broken out between salaries and wages and other direct costs.

d. A chart showing the organizational structure of the agency during the period for which the proposal applies, along with a functional statement(s) noting the duties and/or responsibilities of all units that comprise the agency. (Once this is submitted, only revisions need be submitted with subsequent proposals.)

3. *Required certification.* Each indirect cost rate proposal shall be accompanied by a certification in the following form:

Certificate of Indirect Costs

This is to certify that I have reviewed the indirect cost rate proposal submitted herewith and to the best of my knowledge and belief

(1) All costs included in this proposal (identify date) to establish billing or final indirect costs rates for (identify period covered by rate) are allowable in accordance with the requirements of the Federal award(s) to which they apply and OMB Circular A-87, "Cost Principles for State and Local Governments." Unallowable costs have been adjusted for in allocating costs as indicated in the cost allocation plan.

(2) All costs included in this proposal are properly allocable to Federal awards on the basis of a beneficial or causal relationship between the expenses incurred and the agreements to which they are allocated in accordance with applicable requirements. Further, the same costs that have been treated as indirect costs have not been claimed as direct costs. Similar types of costs have been accounted for consistently and the Federal Government will be notified of any accounting changes that would affect the predetermined rate.

I declare that the foregoing is true and correct.

Governmental Unit _____
Signature _____
Name of Official _____
Title _____
Date of Execution: _____

E. Negotiation and Approval of Rates

1. Indirect cost rates will be reviewed, negotiated, and approved by the cognizant Federal agency on a timely basis. Once a rate has been agreed upon, it will be accepted and used by all Federal agencies unless prohibited or limited by statute. Where a Federal funding agency has reason to believe that special operating factors affecting its awards necessitate special indirect cost rates, the funding agency will, prior to the time the rates are negotiated, notify the cognizant Federal agency.

2. The use of predetermined rates, if allowed, is encouraged where the cognizant agency has reasonable assurance based on past experience and reliable projection of the grantee agency's costs, that the rate is not likely to exceed a rate based on actual costs. Long-term agreements utilizing predetermined rates extending over two or more years are encouraged, where appropriate.

3. The results of each negotiation shall be formalized in a written agreement between the cognizant agency and the governmental unit. This agreement will be subject to re-opening if the agreement is subsequently found to violate a statute, or the information upon which the plan was negotiated is later found to be materially incomplete or inaccurate. The agreed upon rates shall be made available to all Federal agencies for their use.

4. Refunds shall be made if proposals are later found to have included costs that (a) are unallowable (i) as specified

by law or regulation, (ii) as identified in Attachment B of this Circular, or (iii) by the terms and conditions of Federal awards, or (b) are unallowable because they are clearly not allocable to Federal awards. These adjustments or refunds will be made regardless of the type of rate negotiated (predetermined, final, fixed, or provisional).

F. Other Policies

1. *Fringe benefit rates.* If overall fringe benefit rates are not approved for the governmental unit as part of the central service cost allocation plan, these rates will be reviewed, negotiated and approved for individual grantee agencies during the indirect cost negotiation process. In these cases, a proposed fringe benefit rate computation should accompany the indirect cost proposal. If fringe benefit rates are not used at the grantee agency level (i.e., the agency specifically identifies fringe benefit costs to individual employees), the governmental unit should so advise the cognizant agency.

2. *Billed services provided by the grantee agency.* In some cases, governmental units provide and bill for services similar to those covered by central service cost allocation plans (e.g., computer centers). Where this occurs, the governmental unit should be guided by the requirements in Attachment C relating to the development of billing rates and documentation requirements, and should advise the cognizant agency of any billed services. Reviews of these types of services (including reviews of costing/billing methodology, profits or losses, etc.) will be made on a case-by-case basis as warranted by the circumstances involved.

3. *Indirect cost allocations not using rates.* In certain situations, a governmental unit, because of the nature of its awards, may be required to develop a cost allocation plan that distributes indirect (and, in some cases, direct) costs to the specific funding sources. In these cases, a narrative cost allocation methodology should be

developed, documented, maintained for audit, or submitted, as appropriate, to the cognizant agency for review, negotiation, and approval.

4. *Appeals.* If a dispute arises in a negotiation of an indirect cost rate (or other rate) between the cognizant agency and the governmental unit, the dispute shall be resolved in accordance with the appeals procedures of the cognizant agency.

5. *Collection of unallowable costs and erroneous payments.* Costs specifically identified as unallowable and charged to Federal awards either directly or indirectly will be refunded (including interest chargeable in accordance with applicable Federal agency regulations).

6. *OMB assistance.* To the extent that problems are encountered among the Federal agencies and/or governmental units in connection with the negotiation and approval process, OMB will lend assistance, as required, to resolve such problems in a timely manner.

(FR Doc. 95-11656 Filed 5-16-95; 8:45 am)
BILLING CODE 3110-01-P

FISCAL REQUIREMENTS



FISCAL REQUIREMENTS

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FISCAL

FISCAL REQUIREMENTS

To ensure that Title I, Part A funds are used to provide services that are in addition to the regular services normally provided by an LEA for participating children, three fiscal requirements related to the expenditure of regular State and local funds must be met by the LEA. An LEA must--

- (1) Maintain State and local effort;
- (2) Provide services in project areas with State and local funds that are at least comparable to services provided in areas not receiving Part A services; and
- (3) Use Part A funds to supplement, not supplant regular non-Federal funds.

MAINTENANCE OF EFFORT

- An LEA may receive its full allocation of Part A funds for any fiscal year only if the SEA determines that the LEA has maintained its fiscal effort in accordance with section 14501 of the ESEA.

Requirement: Section 14501 provides that an LEA may receive funds under a covered program (Title I, Part A is a covered program) for any fiscal year only if the SEA finds that either the combined fiscal effort per student or the aggregate expenditures of the LEA and the State with respect to the provision of free public education by the LEA for the preceding fiscal year was not less than 90 percent of the combined fiscal effort or aggregate expenditures for the second preceding fiscal year.

Failure to Meet the Requirement: The SEA shall reduce the amount of the allocation of funds under a covered program in any fiscal year in the exact proportion by which an LEA fails to maintain effort by falling below 90 percent of both the combined fiscal effort per student and aggregate expenditures (using the measure most favorable to the LEA).

For a year in which effort was not maintained, the lesser amount shall not be used for computing maintenance of effort in subsequent years.

Waiver: The Secretary may waive the maintenance of effort requirements if he determines that such a waiver would be equitable due to--

- ◆ exceptional or uncontrollable circumstances such as a natural disaster;
or
- ◆ a precipitous decline in the financial resources of the LEA.

Section 200.64 of the Title I regulations defines several terms applicable to calculating maintenance of effort.

Expenditures to be included

In determining whether an LEA has maintained fiscal effort, the SEA must consider the LEA's expenditures from State and local funds for free public education. Those expenditures include expenditures for administration, instruction, attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities.

Expenditures to be excluded

Expenditures for community services, capital outlay, and debt service are not to be included in the determination. In addition, expenditures made from funds provided by the Federal Government for which the LEA is required to account to the Federal Government directly or through the SEA are excluded from the determination.

"Preceding fiscal year"

For purposes of determining maintenance of effort, the "preceding fiscal year" is the Federal fiscal year or the 12-month fiscal period most commonly used in a State for official reporting purposes prior to the beginning of the Federal fiscal year in which funds are available.

[NOTE: The Department will be issuing regulations for Title XIV which includes the maintenance of effort requirements. Once published, the Title I maintenance of effort regulations will be repealed.]

EXAMPLE:

For funds first made available on July 1, 1995, if a State is using the Federal fiscal year, the "preceding fiscal year" is Federal fiscal year 1994 (which began on October 1, 1993) and the "second preceding fiscal year" is Federal fiscal year 1993 (which began on October 1, 1992).

If a State is using a fiscal year that begins on July 1, 1995, the "preceding fiscal year" is the 12-month period ending on June 30, 1994, and the "second preceding fiscal year" is the period ending on June 30, 1993.

Funds First Available	Preceding Fiscal Year	Second Preceding Fiscal Year
July 1, 1996	1995 (1994-95)	1994 (1993-94)
July 1, 1997	1996 (1995-96)	1995 (1994-95)
July 1, 1998	1997 (1996-97)	1996 (1995-96)
July 1, 1999	1998 (1997-98)	1997 (1996-97)
July 1, 2000	1999 (1998-99)	1998 (1997-98)

Failure to maintain effort

If in the preceding year an LEA failed to spend at least 90 percent of what it spent in the second preceding year, the SEA must reduce the LEA's Part A allocation proportionate to the LEA's failure to maintain effort.

EXAMPLE:

If, during the preceding year, the LEA needed to spend \$900,000 to meet the 90 percent level but only spent \$850,000, the LEA failed to meet the 90 percent level by \$50,000. Therefore, unless the Secretary grants a waiver, the SEA must reduce the LEA's allocation by 5.6 percent ($\$50,000 \div \$900,000 = 5.6\%$)

In determining maintenance of effort for the fiscal year immediately following the fiscal year in which the LEA failed to maintain effort, the SEA must consider the LEA's expenditures in the year the failure occurred to be no less than 90 percent of the expenditures for the third preceding year.

EXAMPLE: (This example is based on an LEA with expenditures of \$1,000,000 in FY 94, \$850,000 in FY 95, \$810,000 in FY 96, \$800,000 in FY 1997, and \$700,000 in FY 1998.)

	1	2	3	4
Program/ Grant Year	Expenditures first preceding year	Expenditures second preceding year	Level required to meet the requirement (90% of column 2)	Reduction in LEA allocation
1996-97 (FY 97)	\$850,000 (FY95)	\$1,000,000 (FY 94)	\$900,000	5.6% of LEA's allocation (\$50,000/ \$900,000)
1997-98 (FY 98)	\$810,000 (FY 96)	\$900,000 90% of FY 94 i.e., 3rd preceding year-instead of FY 95	\$810,000	No reduction to FY 98 grant
1998-99 (FY 99)	\$800,000 (FY 97)	\$810,000 (FY 96)	\$729,000	No reduction to FY 99 grant
1999- 2000 (FY 00)	\$700,000 (FY 98)	\$800,000 (FY 97)	\$720,000	2.8% of LEA's FY 2000 allocation (\$20,000/ \$720,000)

COMPARABILITY

- An LEA may receive Part A funds only if it uses State and local funds to provide services in Part A schools that are at least comparable to the services provided in schools that are not receiving Part A funds. If the LEA serves all of its schools with

Part A funds, the LEA must use State and local funds to provide services that are substantially comparable in each Part A school.

An LEA may determine comparability on a districtwide basis or on a grade-span basis.

- Even if all schools in the LEA or in a grade span grouping are served, the LEA must demonstrate that it will use State and local funds to provide services that, taken as a whole, are substantially comparable in each school.

For example, the LEA, in order to establish a comparison to determine that services are "substantially comparable," may calculate ratios for the group of schools serving program areas with the lowest percentage of children from low-income families. The ratio for each of the other program schools would then be compared with the average calculated for the comparison group of program schools.

- Although there is no limitation on the number of grade spans an LEA may use, the number should match the basic organization of schools in the LEA. For example, if the LEA's organization includes elementary, middle, and senior high schools, the LEA would have three grade spans.
- If there is a significant difference in the enrollments of schools within a grade span--for example, the largest school in the grade span has an enrollment that is two times the enrollment of the smallest school in the grade span--the LEA may divide grades spans into a large school group and a small school group.
- The comparability requirement does not apply to an LEA that does not have more than one building for each grade span. An LEA may also exclude schools with 100 or fewer students from its comparability determinations.
- An LEA shall be considered to have met the comparability requirement if the LEA files with the SEA a written assurance that it has established and implemented a--
 - ◆ Districtwide salary schedule;
 - ◆ Policy to ensure equivalence among schools in teachers, administrators, and other staff; and
 - ◆ Policy to ensure equivalence among schools in the provision of curriculum materials and instructional supplies;

In the alternative, an LEA may meet the comparability requirement if it establishes and implements other measures for determining compliance such as student/instructional staff ratios or student/instructional staff salary ratios. For example, an LEA may--

A) Compare the average number of students per instructional staff in each Part A school with the average number of students per instructional staff in schools not participating in Part A programs. A Part A school is comparable if its average does not exceed 110 percent of the average of schools not participating in Part A programs.

B) Compare the average instructional staff salary expenditure per student in each program school with the average instructional staff salary expenditure per student in schools not participating under Part A. A Part A school is comparable if its average is at least 90 percent of the average of schools not participating in Part A programs.

- ◆ Staff salary differentials for years of employment **shall not be included** in comparability determinations.
- ◆ An LEA need not include unpredictable changes in student enrollment or personnel assignments that occur after the beginning of a school year in determining comparability of services.

Records: If the LEA files a written assurance that it has established and implemented a districtwide salary schedule and policies to ensure equivalence among schools in staffing and in the provision of materials and supplies, it must keep records to document that the salary schedule and policies were implemented and that equivalence was achieved among schools in staffing, materials, and supplies. If the LEA established and implemented other measures for determining compliance with comparability such as student/instructional staff ratios, it must maintain source documentation to support the calculations and documentation to demonstrate that any needed adjustment to staff assignments were made.

Developing Procedures for Compliance

- An LEA must develop procedures for compliance with the comparability requirement and implement those procedures annually. An LEA is only required to document compliance with the comparability requirement biennially (every two years).

Determining Compliance

- When determining compliance for comparability, an LEA may exclude State and local funds expended for--
 - ◆ Bilingual education for LEP children; and
 - ◆ Excess costs of providing services to children with disabilities as determined by the LEA.

Note: Title I no longer permits any exclusion of supplemental State or local funds from the Title I comparability requirement.

SUPPLEMENT, NOT SUPPLANT

An LEA may use Title I funds only to supplement and, to the extent practical, increase the level of funds that would, in the absence of Title I funds, be made available from non-Federal sources for the education of children participating in Title I programs. In no case may Title I funds be used to supplant--take the place of--funds from non-Federal sources. To meet this requirement, an LEA is not required to provide Title I services using a particular instructional method or in a particular instructional setting.

Program Designs

There are several types of programs that meet the supplement, not supplant requirement. As provided in the statute and also highlighted in the schoolwide and targeted assistance school sections of this guidance, schools are to use effective instructional strategies that give primary consideration to providing extended learning time such as an extended school year, before- and after-school, and summer programs, and minimize removing children from the regular classroom during regular school hours for Title I services. LEAs, in turn, should provide as much assistance as possible to schools to facilitate these types of instructional strategies. The Targeted Assistance Schools chapter of this guidance contains a variety examples of these strategies.

Exclusion of Supplemental State and Local Program Funds from the Supplement, not Supplant Requirement

When determining whether Title I funding is supplemental, an SEA or LEA may exclude State and local funds expended in any **eligible** school or school attendance area for carrying out a program that meets the schoolwide programs requirements of section 1114 or targeted assistance schools requirements of section 1115.

A program meets the requirements of section 1114 if it is--

- ◆ implemented in a school that meets the Title I schoolwide program poverty thresholds--60% in 1995-96; 50% in subsequent years;
- ◆ is designed to upgrade the entire educational program in the school to enable all children to meet the State's challenging student performance standards;
- ◆ is designed to meet the educational needs of all children in the school, particularly the needs of children who are failing, or most at risk of failing, to meet the State's student performance standards; and

- ◆ uses the State's system of assessment to review the effectiveness of the program.

A program meets the requirements of section 1115 if it--

- ◆ serves only children who are failing, or most at risk of failing, to meet the State's student performance standards;
- ◆ provides supplementary services designed to meet the special educational needs of children who are participating in the program to enable those children to meet the State's student performance standards; and
- ◆ uses the State's system of assessment to review the effectiveness of the program.

Although past authorizations required approval, neither a State nor an LEA needs to apply for approval to exclude State or local funds under the Title I of the ESEA.

Note: At the end of this chapter is a Memorandum to Chief State School Officers that the Department issued on July 21, 1995 that explains the differences between Chapter 1 and Title I with respect to the supplement, not supplant exclusion and also relays the Department's position regarding meeting the new requirement in the 1995-96 school year.



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

THE ASSISTANT SECRETARY

July 21, 1995

MEMORANDUM TO CHIEF STATE SCHOOL OFFICERS

Re: Exclusion of supplemental State and local programs from the Title I supplement, not supplant requirement

I am writing to provide guidance regarding the provision in section 1120A(b)(1)(B) of Title I of the Elementary and Secondary Education Act (ESEA) that permits, in certain circumstances, the exclusion of supplemental State and local funds from determinations under the supplement, not supplant requirement. Guidance is needed because this provision differs in several significant respects from the predecessor provision in section 1018(d) of Chapter 1 of Title I of the ESEA.

In general, under section 1120A(b)(1)(A) of Title I, a State or local educational agency (LEA) must use funds provided under Title I only to supplement the amount of funds that would, in the absence of the Title I funds, be made available from non-Federal sources for the education of children participating in Title I programs. A State or LEA may not use Title I funds to supplant non-Federal funds. Section 1120A(b)(1)(B) of Title I provides certain flexibility in implementing this requirement. It states: "For the purpose of complying with subparagraph (A) [the supplement, not supplant requirement], a State or local educational agency may exclude supplemental State and local funds expended in any eligible school attendance area or school for programs that meet the requirements of section 1114 or 1115."

Section 200.63(c) of the Title I regulations published on July 3, 1995 (60 FR 34800) provides flexibility in determining whether State or local programs meet the requirements of section 1114 or 1115. A program meets the requirements of section 1114 if it is implemented in a school that meets the Title I schoolwide poverty thresholds (i.e., 60% poverty in 1995-96; 50% poverty in subsequent years); is designed to upgrade the entire educational program in the school to enable all children to meet the State's challenging student performance standards; is designed to meet the educational needs of all children in the school, particularly the needs of children who are failing, or most at risk of failing, to meet the State's student performance standards; and uses the State's system of assessment to review the effectiveness of the program. A program meets the requirements of section 1115 if it serves only children who are failing, or most at risk of failing, to meet the State's student performance standards; provides supplementary services designed to meet the special educational needs of children who are participating in the

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Our mission is to ensure equal access to education and to promote educational excellence throughout the Nation.

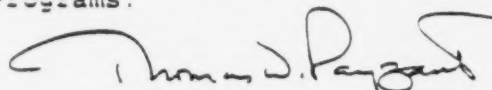
program to enable those children to meet the State's student performance standards, and uses the State's system of assessment to review the effectiveness of the program. Unlike under section 1018(d) of Chapter 1, a State does not need to apply to the Secretary for approval to exclude State funds, nor does an LEA need to apply to the State for approval to exclude State or local funds.

In order to ensure that high-poverty schools receive sufficient resources to make a difference in the success of their children in meeting the State's standards, section 1120A(b)(1)(B) of Title I does not permit as broad an exclusion from the supplement, not supplant requirement as did section 1018(d) of Chapter 1. Under section 1120A(b)(1)(B), a State or LEA may only exclude from supplement, not supplant determinations supplemental State and local funds expended in Title I eligible school attendance areas or schools. This provision thus enables an LEA with eligible but unserved Title I schools to concentrate its supplemental State and local funds in those schools while using Title I funds in its higher-poverty schools. However, an LEA may no longer concentrate supplemental State and local funds in ineligible Title I schools without also providing Title I eligible schools their fair share of those funds. In addition, section 1120A does not permit any exclusion of supplemental State or local funds from the Title I comparability requirement.

We recognize that, for some States and LEAs, it may be very difficult to implement section 1120A(b)(1)(B) in time for the 1995-96 school year, given that final regulations clarifying the provision were not published until July 3 while many local staffing, budget, and programmatic decisions had to be made last spring. Adequate time may be needed to shift State and local resources, staff, and programs. Moreover, in some instances, State or local laws may need to be modified. Therefore, in enforcing this provision for the 1995-96 school year, the Department will take into account the difficult circumstances and dislocation that States and LEAs face in meeting this requirement. At the same time, the Department cannot authorize total disregard for the new provision. There may be situations in which an LEA can make appropriate changes promptly without great dislocation and thus comply fully with the new requirement by the beginning of the 1995-96 school year. Moreover, an LEA that has already made changes to comply with section 1120A should not revert to its prior practices under Chapter 1.

Page 3 - Memorandum to Chief State School Officers

Please disseminate the guidance in this memorandum to the LEAs in your State. If you have any questions about the guidance, do not hesitate to contact me or Mary Jean LeTendre, Director of Compensatory Education Programs.



Thomas W. Payzant

cc: State Title I Coordinators

APPENDIX

Title I - Amendments to the Elementary and Secondary Education Act of 1965 (Public Law 103-382)

Title XIV - General Provisions (Public Law 103-382)

Title I Regulations

IMPROVING AMERICA'S SCHOOLS
ACT OF 1994

257

256

Public Law 103-382
103d Congress

An Act

Oct. 20, 1994
[H.R. 6]

Improving
America's
Schools Act of
1994. Inter-
governmental
relations.
20 USC 6301
note.

To extend for five years the authorizations of appropriations for the program under the Elementary and Secondary Education Act of 1965, and for certain other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Improving America's Schools Act of 1994".

SEC. 2. ORGANIZATION OF THE ACT.

This Act is organized into the following titles:

TITLE I—AMENDMENTS TO THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965

TITLE II—AMENDMENTS TO THE GENERAL EDUCATION PROVISIONS ACT

TITLE III—AMENDMENTS TO OTHER ACTS

TITLE IV—NATIONAL EDUCATION STATISTICS

TITLE V—MISCELLANEOUS

SEC. 3. EFFECTIVE DATES; TRANSITION.

(a) EFFECTIVE DATES.—

(1) TITLE I.—

(A) Title I and the amendment made by title I of this Act shall take effect July 1, 1995, except that those provisions of title I that apply to programs under title VIII (Impact Aid) of the Elementary and Secondary Education Act of 1965, as amended by this Act, and to programs under such Act that are conducted on a competitive basis, shall be effective with respect to appropriations for use under such programs for fiscal year 1995 and for subsequent fiscal years.

(B) Title VIII of the Elementary and Secondary Education Act of 1965, as amended by title I of this Act, shall take effect on the date of the enactment of this Act.

(2) TITLE II.—Title II of this Act and the amendments made by title II of this Act shall take effect on the date of enactment of this Act, except that section 236 (equity for students, teachers, and other program beneficiaries) of such title shall be effective—

(A) July 1, 1995 for noncompetitive programs in which funds are allocated on the basis of a formula; and

20 USC 1221
note.

(B) for programs that are conducted on a competitive basis, with respect to appropriations for use under such programs in fiscal year 1995 and in subsequent fiscal years.

(3) TITLE III.—(A) Parts A and B of title III of this Act and the amendments made by such parts shall take effect on July 1, 1995.

(B) Part C of title III of this Act and the amendments made by such part shall take effect on October 1, 1994.

(b) TRANSITION.—Notwithstanding any other provision of law, a recipient of funds under the Elementary and Secondary Education Act of 1965, as such Act was in effect on the day preceding the date of enactment of this Act, may use funds available to such recipient under such predecessor authority to carry out necessary and reasonable planning and transition activities in order to ensure a smooth implementation of programs authorized by this Act.

20 USC 1411
note.

20 USC 236
note.

20 USC 6301
note.

TITLE I—AMENDMENTS TO THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965

SEC. 101. AMENDMENTS TO THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965.

The Elementary and Secondary Education Act of 1965 (20 U.S.C. 2701 et seq.) is amended to read as follows:

"SECTION 1. TABLE OF CONTENTS.

"This Act may be cited as the 'Elementary and Secondary Education Act of 1965'.

20 USC 6301
note.

"TITLE I—HELPING DISADVANTAGED CHILDREN MEET HIGH STANDARDS

"SEC. 1001. DECLARATION OF POLICY AND STATEMENT OF PURPOSE.

20 USC 6301.

"(a) STATEMENT OF POLICY.—

"(1) IN GENERAL.—The Congress declares it to be the policy of the United States that a high-quality education for all individuals and a fair and equal opportunity to obtain that education are a societal good, are a moral imperative, and improve the life of every individual, because the quality of our individual lives ultimately depends on the quality of the lives of others.

"(2) ADDITIONAL POLICY.—The Congress further declares it to be the policy of the United States to expand the program authorized by this title over the fiscal years 1996 through 1999 by increasing funding for this title by at least \$750,000,000 over baseline each fiscal year and thereby increasing the percentage of eligible children served in each fiscal year with the intent of serving all eligible children by fiscal year 2004.

"(b) RECOGNITION OF NEED.—The Congress recognizes that—

"(1) although the achievement gap between disadvantaged children and other children has been reduced by half over the past two decades, a sizable gap remains, and many segments of our society lack the opportunity to become well educated;

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"(2) the most urgent need for educational improvement is in schools with high concentrations of children from low-income families and achieving the National Education Goals will not be possible without substantial improvement in such schools;

"(3) educational needs are particularly great for low-achieving children in our Nation's highest-poverty schools, children with limited English proficiency, children of migrant workers, children with disabilities, Indian children, children who are neglected or delinquent, and young children and their parents who are in need of family-literacy services;

"(4) while title I and other programs funded under this Act contribute to narrowing the achievement gap between children in high-poverty and low-poverty schools, such programs need to become even more effective in improving schools in order to enable all children to achieve high standards; and

"(5) in order for all students to master challenging standards in core academic subjects as described in the third National Education Goal described in section 102(3) of the Goals 2000: Educate America Act, students and schools will need to maximize the time spent on teaching and learning the core academic subjects.

"(c) WHAT HAS BEEN LEARNED SINCE 1988.—To enable schools to provide all children a high-quality education, this title builds upon the following learned information:

"(1) All children can master challenging content and complex problem-solving skills. Research clearly shows that children, including low-achieving children, can succeed when expectations are high and all children are given the opportunity to learn challenging material.

"(2) Conditions outside the classroom such as hunger, unsafe living conditions, homelessness, unemployment, violence, inadequate health care, child abuse, and drug and alcohol abuse can adversely affect children's academic achievement and must be addressed through the coordination of services, such as health and social services, in order for the Nation to meet the National Education Goals.

"(3) Use of low-level tests that are not aligned with schools' curricula fails to provide adequate information about what children know and can do and encourages curricula and instruction that focus on the low-level skills measured by such tests.

"(4) Resources are more effective when resources are used to ensure that children have full access to effective high-quality regular school programs and receive supplemental help through extended-time activities.

"(5) Intensive and sustained professional development for teachers and other school staff, focused on teaching and learning and on helping children attain high standards, is too often not provided.

"(6) Insufficient attention and resources are directed toward the effective use of technology in schools and the role technology can play in professional development and improved teaching and learning.

"(7) All parents can contribute to their children's success by helping at home and becoming partners with teachers so that children can achieve high standards.

"(8) Decentralized decisionmaking is a key ingredient of systemic reform. Schools need the resources, flexibility, and authority to design and implement effective strategies for bringing their children to high levels of performance.

"(9) Opportunities for students to achieve high standards can be enhanced through a variety of approaches such as public school choice and public charter schools.

"(10) Attention to academics alone cannot ensure that all children will reach high standards. The health and other needs of children that affect learning are frequently unmet, particularly in high-poverty schools, thereby necessitating coordination of services to better meet children's needs.

"(11) Resources provided under this title can be better targeted on the highest-poverty local educational agencies and schools that have children most in need.

"(12) Equitable and sufficient resources, particularly as such resources relate to the quality of the teaching force, have an integral relationship to high student achievement.

"(d) STATEMENT OF PURPOSE.—The purpose of this title is to enable schools to provide opportunities for children served to acquire the knowledge and skills contained in the challenging State content standards and to meet the challenging State performance standards developed for all children. This purpose shall be accomplished by—

"(1) ensuring high standards for all children and aligning the efforts of States, local educational agencies, and schools to help children served under this title to reach such standards;

"(2) providing children an enriched and accelerated educational program, including, when appropriate, the use of the arts, through schoolwide programs or through additional services that increase the amount and quality of instructional time so that children served under this title receive at least the classroom instruction that other children receive;

"(3) promoting schoolwide reform and ensuring access of children (from the earliest grades) to effective instructional strategies and challenging academic content that includes intensive complex thinking and problem-solving experiences;

"(4) significantly upgrading the quality of instruction by providing staff in participating schools with substantial opportunities for professional development;

"(5) coordinating services under all parts of this title with each other, with other educational services, and, to the extent feasible, with health and social service programs funded from other sources;

"(6) affording parents meaningful opportunities to participate in the education of their children at home and at school;

"(7) distributing resources, in amounts sufficient to make a difference, to areas and schools where needs are greatest;

"(8) improving accountability, as well as teaching and learning, by using State assessment systems designed to measure how well children served under this title are achieving challenging State student performance standards expected of all children; and

"(9) providing greater decisionmaking authority and flexibility to schools and teachers in exchange for greater responsibility for student performance.

"SEC. 1002. AUTHORIZATION OF APPROPRIATIONS.

"(a) **LOCAL EDUCATIONAL AGENCY GRANTS.**—For the purpose of carrying out part A, other than section 1120(e), there are authorized to be appropriated \$7,400,000,000 for fiscal year 1995 and such sums as may be necessary for each of the four succeeding fiscal years.

"(b) **EVEN START.**—For the purpose of carrying out part B, there are authorized to be appropriated \$118,000,000 for fiscal year 1995 and such sums as may be necessary for each of the four succeeding fiscal years.

"(c) **EDUCATION OF MIGRATORY CHILDREN.**—For the purpose of carrying out part C, there are authorized to be appropriated \$310,000,000 for fiscal year 1995 and such sums as may be necessary for each of the four succeeding fiscal years.

"(d) **PREVENTION AND INTERVENTION PROGRAMS FOR YOUTH WHO ARE NEGLECTED, DELINQUENT, OR AT RISK OF DROPPING OUT.**—For the purpose of carrying out part D, there are authorized to be appropriated \$40,000,000 for fiscal year 1995 and such sums as may be necessary for each of the four succeeding fiscal years.

"(e) **CAPITAL EXPENSES.**—For the purpose of carrying out section 1120(e), there are authorized to be appropriated \$41,434,000 for fiscal year 1995 and such sums as may be necessary for each of the four succeeding fiscal years.

"(f) **ADDITIONAL ASSISTANCE FOR SCHOOL IMPROVEMENT.**—For the purpose of providing additional needed assistance to carry out sections 1116 and 1117, there are authorized to be appropriated such sums as may be necessary for fiscal year 1996 and each of the three succeeding fiscal years.

"(g) **FEDERAL ACTIVITIES.**—

"(1) **SECTION 1501.**—For the purpose of carrying out section 1501, there are authorized to be appropriated \$9,000,000 for fiscal year 1995 and such sums as may be necessary for each of the four succeeding fiscal years.

"(2) **SECTIONS 1502 AND 1503.**—For the purpose of carrying out sections 1502 and 1503, there are authorized to be appropriated \$50,000,000 for fiscal year 1995 and such sums as may be necessary for each of the four succeeding fiscal years.

"SEC. 1003. RESERVATION AND ALLOCATION FOR SCHOOL IMPROVEMENT.

"(a) **PAYMENT FOR SCHOOL IMPROVEMENT.**—

"(1) **IN GENERAL.**—Except as provided in paragraph (3), each State may reserve for the proper and efficient performance of its duties under subsections (c)(5) and (d) of section 1116, and section 1117, one-half of 1 percent of the funds allocated to the State under subsections (a), (c), and (d), of section 1002 for fiscal year 1995 and each succeeding fiscal year.

"(2) **MINIMUM.**—The total amount that may be reserved by each State, other than the outlying areas, under this subsection for any fiscal year, when added to amounts appropriated for such fiscal year under section 1002(f) that are allocated to the State under subsection (b), if any, may not be less than \$200,000. The total amount that may be reserved by each outlying area under this subsection for any fiscal year, when added to amounts appropriated for such fiscal year under section 1002(f) that are allocated under subsection (b) to the outlying area, if any, may not be less than \$25,000.

"(3) **SPECIAL RULE.**—If the amount reserved under paragraph (1) when added to the amount made available under section 1002(f) for a State is less than \$200,000 for any fiscal year, then such State may reserve such additional funds under subsections (a), (c), and (d) of section 1002 as are necessary to make \$200,000 available to such State.

"(b) **ADDITIONAL STATE ALLOCATIONS FOR SCHOOL IMPROVEMENT.**—From the amount appropriated under section 1002(f) for any fiscal year, each State shall be eligible to receive an amount that bears the same ratio to the amount appropriated as the amount allocated to the State under this part (other than section 1120(e)) bears to the total amount allocated to all States under this part (other than section 1120(e)).

"PART A—IMPROVING BASIC PROGRAMS OPERATED BY LOCAL EDUCATIONAL AGENCIES**"Subpart 1—Basic Program Requirements****"SEC. 1111. STATE PLANS.**

"(a) **PLANS REQUIRED.**—

"(1) **IN GENERAL.**—Any State desiring to receive a grant under this part shall submit to the Secretary a plan, developed in consultation with local educational agencies, teachers, pupil services personnel, administrators, other staff, and parents, that satisfies the requirements of this section and that is coordinated with other programs under this Act, the Goals 2000: Educate America Act, and other Acts, as appropriate, consistent with section 14306.

Grants.

"(2) **CONSOLIDATION PLAN.**—A State plan submitted under paragraph (1) may be submitted as part of a consolidation plan under section 14302.

"(b) **STANDARDS AND ASSESSMENTS.**—

"(1) **CHALLENGING STANDARDS.**—(A) Each State plan shall demonstrate that the State has developed or adopted challenging content standards and challenging student performance standards that will be used by the State, its local educational agencies, and its schools to carry out this part, except that a State shall not be required to submit such standards to the Secretary.

"(B) If a State has State content standards or State student performance standards developed under title III of the Goals 2000: Educate America Act and an aligned set of assessments for all students developed under such title, or, if not developed under such title, adopted under another process, the State shall use such standards and assessments, modified, if necessary, to conform with the requirements of subparagraphs (A) and (D) of this paragraph, and paragraphs (2) and (3).

"(C) If a State has not adopted State content standards and State student performance standards for all students, the State plan shall include a strategy and schedule for developing State content standards and State student performance standards for elementary and secondary school children served under this part in subjects as determined by the State, but including at least mathematics and reading or language arts by the end of the one-year period described in paragraph (6), which

standards shall include the same knowledge, skills, and levels of performance expected of all children.

"(D) Standards under this paragraph shall include—

"(i) challenging content standards in academic subjects that—

"(I) specify what children are expected to know and be able to do;

"(II) contain coherent and rigorous content; and

"(III) encourage the teaching of advanced skills;

"(ii) challenging student performance standards that—

"(I) are aligned with the State's content standards;

"(II) describe two levels of high performance, proficient and advanced, that determine how well children are mastering the material in the State content standards; and

"(III) describe a third level of performance, partially proficient, to provide complete information about the progress of the lower performing children toward achieving to the proficient and advanced levels of performance.

"(E) For the subjects in which students will be served under this part, but for which a State is not required by subparagraphs (A), (B), and (C) to develop, and has not otherwise developed such standards, the State plan shall describe a strategy for ensuring that such students are taught the same knowledge and skills and held to the same expectations as are all children.

"(2) YEARLY PROGRESS.—

"(A) Each State plan shall demonstrate, based on assessments described under paragraph (3), what constitutes adequate yearly progress of—

"(i) any school served under this part toward enabling children to meet the State's student performance standards; and

"(ii) any local educational agency that received funds under this part toward enabling children in schools receiving assistance under this part to meet the State's student performance standards.

"(B) Adequate yearly progress shall be defined in a manner—

"(i) that is consistent with guidelines established by the Secretary that result in continuous and substantial yearly improvement of each local educational agency and school sufficient to achieve the goal of all children served under this part meeting the State's proficient and advanced levels of performance, particularly economically disadvantaged and limited English proficient children; and

"(ii) that links progress primarily to performance on the assessments carried out under this section while permitting progress to be established in part through the use of other measures.

"(3) ASSESSMENTS.—Each State plan shall demonstrate that the State has developed or adopted a set of high-quality, yearly student assessments, including assessments in at least mathematics and reading or language arts, that will be used as the primary means of determining the yearly performance of

each local educational agency and school served under this part in enabling all children served under this part to meet the State's student performance standards. Such assessments shall—

"(A) be the same assessments used to measure the performance of all children, if the State measures the performance of all children;

"(B) be aligned with the State's challenging content and student performance standards and provide coherent information about student attainment of such standards;

"(C) be used for purposes for which such assessments are valid and reliable, and be consistent with relevant, nationally recognized professional and technical standards for such assessments;

"(D) measure the proficiency of students in the academic subjects in which a State has adopted challenging content and student performance standards and be administered at some time during—

"(i) grades 3 through 5;

"(ii) grades 6 through 9; and

"(iii) grades 10 through 12;

"(E) involve multiple up-to-date measures of student performance, including measures that assess higher order thinking skills and understanding;

"(F) provide for—

"(i) the participation in such assessments of all students;

"(ii) the reasonable adaptations and accommodations for students with diverse learning needs, necessary to measure the achievement of such students relative to State content standards; and

"(iii) the inclusion of limited English proficient students who shall be assessed, to the extent practicable, in the language and form most likely to yield accurate and reliable information on what such students know and can do, to determine such students' mastery of skills in subjects other than English;

"(G) include students who have attended schools in a local educational agency for a full academic year but have not attended a single school for a full academic year, however the performance of students who have attended more than one school in the local educational agency in any academic year shall be used only in determining the progress of the local educational agency;

"(H) provide individual student interpretive and descriptive reports, which shall include scores, or other information on the attainment of student performance standards; and

"(I) enable results to be disaggregated within each State, local educational agency, and school by gender, by each major racial and ethnic group, by English proficiency status, by migrant status, by students with disabilities as compared to nondisabled students, and by economically disadvantaged students as compared to students who are not economically disadvantaged.

"(4) SPECIAL RULE.—Assessment measures that do not meet the requirements of paragraph (3)(C) may be included as one

of the multiple measures, if a State includes in the State plan information regarding the State's efforts to validate such measures.

"(5) LANGUAGE ASSESSMENTS.—Each State plan shall identify the languages other than English that are present in the participating student population and indicate the languages for which yearly student assessments are not available and are needed. The State shall make every effort to develop such assessments and may request assistance from the Secretary if linguistically accessible assessment measures are needed. Upon request, the Secretary shall assist with the identification of appropriate assessment measures in the needed languages through the Office of Bilingual Education and Minority Languages Affairs.

"(6) STANDARD AND ASSESSMENT DEVELOPMENT.—(A) A State that does not have challenging State content standards and challenging State student performance standards, in at least mathematics and reading or language arts, shall develop such standards within one year of receiving funds under this part after the first fiscal year for which such State receives such funds after the date of enactment of the Improving America's Schools Act of 1994.

"(B) A State that does not have assessments that meet the requirements of paragraph (3) in at least mathematics and reading or language arts shall develop and test such assessments within four years (one year of which shall be used for field testing such assessment), of receiving funds under this part after the first fiscal year for which such State receives such funds after the date of enactment of the Improving America's Schools Act of 1994 and shall develop benchmarks of progress toward the development of such assessments that meet the requirements of paragraph (3), including periodic updates.

"(C) The Secretary may extend for one additional year the time for testing new assessments under subparagraph (B) upon the request of the State and the submission of a strategy to correct problems identified in the field testing of such new assessments.

"(D) If, after the one-year period described in subparagraph (A), a State does not have challenging State content and challenging student performance standards in at least mathematics and reading or language arts, a State shall adopt a set of standards in these subjects such as the standards and assessments contained in other State plans the Secretary has approved.

"(E) If, after the four-year period described in subparagraph (B), a State does not have assessments, in at least mathematics and reading or language arts, that meet the requirement of paragraph (3), and is denied an extension under subparagraph (C), a State shall adopt an assessment that meets the requirement of paragraph (3) such as one contained in other State plans the Secretary has approved.

"(7) TRANSITIONAL ASSESSMENTS.—(A) If a State does not have assessments that meet the requirements of paragraph (3) and proposes to develop such assessments under paragraph (6)(B), the State may propose to use a transitional set of yearly

statewide assessments that will assess the performance of complex skills and challenging subject matter.

"(B) For any year in which a State uses transitional assessments, the State shall devise a procedure for identifying local educational agencies under paragraphs (3) and (7) of section 1116(d), and schools under paragraphs (1) and (7) of section 1116(c), that rely on accurate information about the academic progress of each such local educational agency and school.

"(8) REQUIREMENT.—Each State plan shall describe—

"(A) how the State educational agency will help each local educational agency and school affected by the State plan develop the capacity to comply with each of the requirements of sections 1112(c)(1)(D), 1114(b), and 1115(c) that is applicable to such agency or school; and

"(B) such other factors the State deems appropriate (which may include opportunity-to-learn standards or strategies developed under the Goals 2000: Educate America Act) to provide students an opportunity to achieve the knowledge and skills described in the challenging content standards adopted by the State.

"(c) OTHER PROVISIONS TO SUPPORT TEACHING AND LEARNING.—Each State plan shall contain assurances that—

"(1)(A) the State educational agency will implement a system of school support teams under section 1117(c), including provision of necessary professional development for those teams;

"(B) the State educational agency will work with other agencies, including educational service agencies or other local consortia, and institutions to provide technical assistance to local educational agencies and schools to carry out the State educational agency's responsibilities under this part, including technical assistance in providing professional development under section 1119 and technical assistance under section 1117; and

"(C)(i) where educational service agencies exist, the State educational agency will consider providing professional development and technical assistance through such agencies; and

"(ii) where educational service agencies do not exist, the State educational agency will consider providing professional development and technical assistance through other cooperative agreements such as through a consortium of local educational agencies;

"(2) the State educational agency will notify local educational agencies and the public of the standards and assessments developed under this section, and of the authority to operate schoolwide programs, and will fulfill the State educational agency's responsibilities regarding local educational agency improvement and school improvement under section 1116, including such corrective actions as are necessary;

"(3) the State educational agency will provide the least restrictive and burdensome regulations for local educational agencies and individual schools participating in a program assisted under this part;

"(4) the State educational agency will encourage the use of funds from other Federal, State, and local sources for schoolwide reform in schoolwide programs under section 1114;

"(5) the Committee of Practitioners established under section 1603(b) will be substantially involved in the development

of the plan and will continue to be involved in monitoring the plan's implementation by the State; and

"(6) the State will coordinate activities funded under this part with school-to-work, vocational education, cooperative education and mentoring programs, and apprenticeship programs involving business, labor, and industry, as appropriate.

"(d) PEER REVIEW AND SECRETARIAL APPROVAL.—

"(1) IN GENERAL.—The Secretary shall—

"(A) establish a peer review process to assist in the review and recommendations for revision of State plans;

"(B) appoint individuals to the peer review process who are representative of State educational agencies, local educational agencies, teachers, and parents;

"(C) following an initial peer review, approve a State plan the Secretary determines meets the requirements of subsections (a), (b), and (c);

"(D) if the Secretary determines that the State plan does not meet the requirements of subsection (a), (b), or (c), immediately notify the State of such determination and the reasons for such determination;

"(E) not decline to approve a State's plan before—

"(i) offering the State an opportunity to revise its plan;

"(ii) providing technical assistance in order to assist the State to meet the requirements under subsections (a), (b), and (c); and

"(iii) providing a hearing; and

"(F) have the authority to disapprove a State plan for not meeting the requirements of this part, but shall not have the authority to require a State, as a condition of approval of the State plan, to include in, or delete from, such plan one or more specific elements of the State's content standards or to use specific assessment instruments or items.

"(2) WITHHOLDING.—The Secretary may withhold funds for State administration and activities under section 1117 until the Secretary determines that the State plan meets the requirements of this section.

"(e) DURATION OF THE PLAN.—

"(1) IN GENERAL.—Each State plan shall—

"(A) remain in effect for the duration of the State's participation under this part; and

"(B) be periodically reviewed and revised by the State, as necessary, to reflect changes in the State's strategies and programs under this part.

"(2) ADDITIONAL INFORMATION.—If the State makes significant changes in its plan, such as the adoption of new State content standards and State student performance standards, new assessments, or a new definition of adequate progress, the State shall submit such information to the Secretary.

"(f) LIMITATION ON CONDITIONS.—Nothing in this part shall be construed to authorize an officer or employee of the Federal Government to mandate, direct, or control a State, local educational agency, or school's specific instructional content or student performance standards and assessments, opportunity-to-learn standards or strategies, curriculum, or program of instruction, as a condition of eligibility to receive funds under this part.

"(g) PROHIBITION.—Nothing in this Act shall be construed to require any State educational agency, local educational agency, or school, to implement opportunity-to-learn standards or strategies developed by such State under the Goals 2000: Educate America Act.

"(h) SPECIAL RULE.—If the aggregate State expenditure by a State educational agency for the operation of elementary and secondary education programs in the State is less than such agency's aggregate Federal expenditure for the State operation of all Federal elementary and secondary education programs, then the State plan shall include assurances and specific provisions that such State will provide State expenditures for the operation of elementary and secondary education programs equal to or exceeding the level of Federal expenditures for such operation by October 1, 1998.

"SEC. 1112. LOCAL EDUCATIONAL AGENCY PLANS.

"(a) PLANS REQUIRED.—

"(1) SUBGRANTS.—A local educational agency may receive a subgrant under this part for any fiscal year only if such agency has on file with the State educational agency a plan, approved by the State educational agency, that is coordinated with other programs under this Act, the Goals 2000: Educate America Act, and other Acts, as appropriate, as specified in section 14306.

"(2) CONSOLIDATED APPLICATION.—The plan may be submitted as part of a consolidated application under section 14304.

"(b) PLAN PROVISIONS.—Each local educational agency plan shall include—

"(1) a description of additional high-quality student assessments, if any, other than the assessments described in the State plan under section 1111, that the local educational agency and schools served under this part will use to—

"(A) determine the success of children served under this part in meeting the State's student performance standards and provide information to teachers, parents, and students on the progress being made toward meeting the State student performance standards described in section 1111(b)(1)(D)(ii);

"(B) assist in diagnosis, teaching, and learning in the classroom in ways that best enable children served under this part to meet State standards and do well in the local curriculum; and

"(C) determine what revisions are needed to projects under this part so that such children will meet the State's student performance standards;

"(2) at the local educational agency's discretion, a description of any other indicators that will be used in addition to the assessments described in paragraph (1) for the uses described in such paragraph;

"(3) a description of the strategy the local educational agency will use to provide professional development for teachers, and, where appropriate, pupil services personnel, administrators, parents and other staff, including local educational agency level staff in accordance with section 1119;

"(4) a description of how the local educational agency will coordinate and integrate services provided under this part with

other educational services at the local educational agency or individual school level, such as—

"(A) Even Start, Head Start, and other preschool programs, including plans for the transition of participants in such programs to local elementary school programs, vocational education programs, and school-to-work transition programs; and

"(B) services for children with limited English proficiency or with disabilities, migratory children served under part C or who were formerly eligible for services under part C in the two-year period preceding the date of the enactment of the Improving America's School Act of 1994, neglected or delinquent youth and youth at risk of dropping out served under part D, homeless children, and immigrant children in order to increase program effectiveness, eliminate duplication, and reduce fragmentation of the instructional program;

"(5) a description of the poverty criteria that will be used to select school attendance areas under section 1113;

"(6) a description of how teachers, in consultation with parents, administrators, and pupil services personnel, in targeted assistance schools under section 1115, will identify the eligible children most in need of services under this part;

"(7) a general description of the nature of the programs to be conducted by such agency's schools under sections 1114 and 1115 and, where appropriate, educational services outside such schools for children living in local institutions for neglected or delinquent children, for neglected and delinquent children in community day school programs, and for eligible homeless children;

"(8) a description of how the local educational agency will ensure that migratory children and formerly migratory children who are eligible to receive services under this part are selected to receive such services on the same basis as other children who are selected to receive services under this part;

"(9) where appropriate, a description of how the local educational agency will use funds under this part to support preschool programs for children, particularly children participating in a Head Start or Even Start program, which services may be provided directly by the local educational agency or through a subcontract with the local Head Start agency designated by the Secretary of Health and Human Services under section 641 of the Head Start Act, agencies operating Even Start programs, or another comparable public early childhood development program.

"(c) ASSURANCES.—

"(1) IN GENERAL.—Each local educational agency plan shall provide assurances that the local educational agency will—

"(A) inform eligible schools and parents of schoolwide project authority;

"(B) provide technical assistance and support to schoolwide programs;

"(C) work in consultation with schools as the schools develop the schools' plans pursuant to section 1114 and assist schools as the schools implement such plans or undertake activities pursuant to section 1115 so that each school can make adequate yearly progress toward meeting

the State content standards and State student performance standards;

"(D) fulfill such agency's school improvement responsibilities under section 1116, including taking corrective actions under section 1116(c)(4);

"(E) coordinate and collaborate, to the extent feasible and necessary as determined by the local educational agency, with other agencies providing services to children, youth, and families, including health and social services;

"(F) provide services to eligible children attending private elementary and secondary schools in accordance with section 1120, and timely and meaningful consultation with private school officials regarding such services;

"(G) take into account the experience of model programs for the educationally disadvantaged, and the findings of relevant research indicating that services may be most effective if focused on students in the earliest grades at schools that receive funds under this part; and

"(H) beginning in fiscal year 1997 and in the case that a local educational agency chooses to use funds under this part to provide early childhood development services to low-income children below the age of compulsory school attendance, ensure that such services comply with the performance standards established under section 641A(a) of the Head Start Act or under section 651 of such Act, as such section 651 was in effect on the day preceding the date of enactment of the Human Services Amendments of 1994.

"(2) SPECIAL RULE.—In carrying out subparagraph (H) of paragraph (1) the Secretary—

"(A) in fiscal year 1995, shall consult with the Secretary of Health and Human Services on the implementation of such subparagraph and shall establish procedures (taking into consideration existing State and local laws, and local teacher contracts) to assist local educational agencies to comply with such subparagraph; and

"(B) in fiscal year 1996, shall disseminate to local educational agencies the Head Start Performance Standards revised pursuant to section 641A(a) of the Head Start Act, and such agencies affected by such subparagraph shall plan for the implementation of such subparagraph (taking into consideration existing State and local laws, and local teacher contracts), including pursuing the availability of other Federal, State, and local funding sources to assist in compliance with such subparagraph.

"(3) INAPPLICABILITY.—The provisions of this subsection shall not apply to preschool programs using the Even Start model or to Even Start programs which are expanded through the use of funds under this part.

"(d) PLAN DEVELOPMENT AND DURATION.—Each local educational agency plan shall—

"(1) be developed in consultation with teachers, including vocational teachers, and pupil services personnel, where appropriate, and parents of children in schools served under this part; and

"(2)(A) remain in effect for the duration of the local educational agency's participation under this part; and

"(B) periodically be reviewed and revised, as necessary, to reflect changes in the local educational agency's strategies and programs.

"(e) STATE APPROVAL.—

"(1) IN GENERAL.—Each local educational agency plan shall be filed according to a schedule established by the State educational agency, except that a local educational agency shall have not more than one year after the date of enactment of the Improving America's Schools Act of 1994 to have such plan provisionally approved by the State educational agency and not more than two years after the date of enactment of such Act to have such plan finally approved by the State educational agency.

"(2) APPROVAL.—The State educational agency shall approve a local educational agency's plan only if the State educational agency determines that the local educational agency's plan will enable schools served under this part to substantially help all children served under this part meet the standards expected of all children described in section 1111(b)(1).

"(3) REVIEW.—The State educational agency shall review the local educational agency's plan to determine if such agency's professional development activities are in accordance with section 1119.

"(f) PROGRAM RESPONSIBILITY.—The local educational agency plan shall reflect the shared responsibility of schools, teachers, and the local educational agency in making decisions regarding activities under sections 1114 and 1115.

"SEC. 1113. ELIGIBLE SCHOOL ATTENDANCE AREAS.

"(a) DETERMINATION.—

"(1) IN GENERAL.—A local educational agency shall use funds received under this part only in eligible school attendance areas.

"(2) ELIGIBLE SCHOOL ATTENDANCE AREAS.—For the purposes of this part—

"(A) the term 'school attendance area' means, in relation to a particular school, the geographical area in which the children who are normally served by that school reside; and

"(B) the term 'eligible school attendance area' means a school attendance area in which the percentage of children from low-income families is at least as high as the percentage of children from low-income families in the local educational agency as a whole.

"(3) RANKING ORDER.—If funds allocated in accordance with subsection (c) are insufficient to serve all eligible school attendance areas, a local educational agency shall—

"(A) annually rank, without regard to grade spans, such agency's eligible school attendance areas in which the concentration of children from low-income families exceeds 75 percent from highest to lowest according to the percentage of children from low-income families; and

"(B) serve such eligible school attendance areas in rank order.

"(4) REMAINING FUNDS.—If funds remain after serving all eligible school attendance areas under paragraph (3), a local educational agency shall—

"(A) annually rank such agency's remaining eligible school attendance areas from highest to lowest either by grade span or for the entire local educational agency according to the percentage of children from low-income families; and

"(B) serve such eligible school attendance areas in rank order either within each grade-span grouping or within the local educational agency as a whole.

"(5) MEASURES.—The local educational agency shall use the same measure of poverty, which measure shall be the number of children ages 5 through 17 in poverty counted in the most recent census data approved by the Secretary, the number of children eligible for free and reduced priced lunches under the National School Lunch Act, the number of children in families receiving assistance under the Aid to Families with Dependent Children program, or the number of children eligible to receive medical assistance under the Medicaid program, or a composite of such indicators, with respect to all school attendance areas in the local educational agency—

"(A) to identify eligible school attendance areas;

"(B) to determine the ranking of each area; and

"(C) to determine allocations under subsection (c).

"(6) EXCEPTION.—This subsection shall not apply to a local educational agency with a total enrollment of less than 1,000 children.

"(7) WAIVER FOR DESEGREGATION PLANS.—The Secretary may approve a local educational agency's written request for a waiver of the requirements of subsections (a) and (c), and permit such agency to treat as eligible, and serve, any school that children attend with a State-ordered or a court-ordered school desegregation plan or a plan that continues to be implemented in accordance with a State-ordered or court-ordered desegregation plan, if (A) the number of economically disadvantaged children enrolled in the school is at least 25 percent of the school's total enrollment; and (B) the Secretary determines on the basis of a written request from such agency and in accordance with such criteria as the Secretary establishes, that approval of that request would further the purposes of this part.

"(b) LOCAL EDUCATIONAL AGENCY DISCRETION.—

"(1) IN GENERAL.—Notwithstanding subsection (a)(2), a local educational agency may—

"(A) designate as eligible any school attendance area or school in which at least 35 percent of the children are from low-income families;

"(B) use funds received under this part in a school that is not in an eligible school attendance area, if the percentage of children from low-income families enrolled in the school is equal to or greater than the percentage of such children in a participating school attendance area of such agency; and

"(C) elect not to serve an eligible school attendance area or eligible school that has a higher percentage of children from low-income families if—

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"(i) the school meets the comparability requirements of section 1120A(c);

"(ii) the school is receiving supplemental funds from other State or local sources that are spent according to the requirements of section 1114 or 1115; and

"(iii) the funds expended from such other sources equal or exceed the amount that would be provided under this part.

"(2) SPECIAL RULE.—Notwithstanding paragraph (1)(C), the number of children attending private elementary and secondary schools who are to receive services, and the assistance such children are to receive under this part, shall be determined without regard to whether the public school attendance area in which such children reside is assisted under paragraph (1).

"(c) ALLOCATIONS.—

"(1) IN GENERAL.—A local educational agency shall allocate funds received under this part to eligible school attendance areas or eligible schools, identified under subsection (a) or (b), in rank order, on the basis of the total number of children from low-income families in each area or school.

"(2) SPECIAL RULE.—(A) Except as provided in subparagraph (B), the per pupil amount of funds allocated to each school attendance area or school under paragraph (1) shall be at least 125 percent of the per pupil amount of funds a local educational agency received for that year under the poverty criteria described by the local educational agency in the plan submitted under section 1112, except that this paragraph shall not apply to a local educational agency that only serves schools in which the percentage of such children is 35 percent or greater.

"(B) A local educational agency may reduce the amount of funds allocated under subparagraph (A) for a school attendance area or school by the amount of any supplemental State and local funds expended in that school attendance area or school for programs that meet the requirements of section 1114 or 1115.

"(3) RESERVATION.—A local educational agency shall reserve such funds as are necessary under this part to provide services comparable to those provided to children in schools funded under this part to serve—

"(A) where appropriate, eligible homeless children who do not attend participating schools, including providing educationally related support services to children in shelters;

"(B) children in local institutions for neglected or delinquent children; and

"(C) where appropriate, neglected and delinquent children in community day school programs.

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"SEC. 1114. SCHOOLWIDE PROGRAMS.

"(a) USE OF FUNDS FOR SCHOOLWIDE PROGRAMS.—

"(1) IN GENERAL.—A local educational agency may use funds under this part, in combination with other Federal, State, and local funds, in order to upgrade the entire educational program in a school described in subparagraph (A) or (B) if, for the initial year of the schoolwide program, the school meets either of the following criteria:

"(A) For the school year 1995–1996—

"(i) the school serves an eligible school attendance area in which not less than 60 percent of the children are from low-income families; or

"(ii) not less than 60 percent of the children enrolled in the school are from such families.

"(B) For the school year 1996–1997 and subsequent years—

"(i) the school serves an eligible school attendance area in which not less than 50 percent of the children are from low-income families; or

"(ii) not less than 50 percent of the children enrolled in the school are from such families.

"(2) STATE ASSURANCES.—(A) A local educational agency may start new schoolwide programs under this section only after the State educational agency provides written information to each local educational agency in the State that demonstrates that such State agency has established the statewide system of support and improvement required by subsections (c)(1) and (e) of section 1117.

"(B) A school that desires to initiate a schoolwide program under this section prior to the establishment of the statewide system of support and improvement required in subsections (c)(1) and (e) of section 1117 shall demonstrate to the local educational agency that such school has received high quality technical assistance and support from other providers of assistance such as comprehensive technical assistance centers, regional laboratories, institutions of higher education, educational service agencies, or other local consortia.

"(3) IDENTIFICATION.—(A) No school participating in a schoolwide program shall be required to identify particular children under this part as eligible to participate in a schoolwide program or to provide supplemental services to such children.

"(B) A school participating in a schoolwide program shall use funds available to carry out this section only to supplement the amount of funds that would, in the absence of funds under this part, be made available from non-Federal sources for the school, including funds needed to provide services that are required by law for children with disabilities and children with limited English proficiency.

"(4) SPECIAL RULE.—(A) Except as provided in subsection (b), the Secretary may, through publication of a notice in the Federal Register, exempt schoolwide programs under this section from statutory or regulatory provisions of any other noncompetitive formula grant program administered by the Secretary, or any discretionary grant program administered by the Secretary (other than formula or discretionary grant programs under the Individuals with Disabilities Education Act), to support schoolwide programs, if the intent and purposes of such other programs are met.

"(B) A school that chooses to use funds from such other programs shall not be relieved of the requirements relating to health, safety, civil rights, gender equity, student and parental participation and involvement, services to private school children, maintenance of effort, comparability of services, uses of Federal funds to supplement, not supplant non-Federal

funds, or the distribution of funds to State or local educational agencies that apply to the receipt of funds from such programs.

"(5) PROFESSIONAL DEVELOPMENT.—Each school receiving funds under this part for any fiscal year shall devote sufficient resources to effectively carry out the activities described in subsection (b)(1)(D) in accordance with section 1119 for such fiscal year, except that a school may enter into a consortium with another school to carry out such activities.

"(b) COMPONENTS OF A SCHOOLWIDE PROGRAM.—

"(1) IN GENERAL.—A schoolwide program shall include the following components:

"(A) A comprehensive needs assessment of the entire school that is based on information on the performance of children in relation to the State content standards and the State student performance standards described in section 1111(b)(1).

"(B) Schoolwide reform strategies that—

"(i) provide opportunities for all children to meet the State's proficient and advanced levels of student performance described in section 1111(b)(1)(D);

"(ii) are based on effective means of improving the achievement of children;

"(iii) use effective instructional strategies, which may include the integration of vocational and academic learning (including applied learning and team teaching strategies), that—

"(I) increase the amount and quality of learning time, such as providing an extended school year and before- and after-school and summer programs and opportunities, and help provide an enriched and accelerated curriculum; and

"(II) include strategies for meeting the educational needs of historically underserved populations, including girls and women;

"(iv)(I) address the needs of all children in the school, but particularly the needs of children who are members of the target population of any program that is included in the schoolwide program, which may include—

"(aa) counseling, pupil services, and mentoring services;

"(bb) college and career awareness and preparation, such as college and career guidance, comprehensive career development, occupational information, enhancement of employability skills and occupational skills, personal finance education, job placement services, and innovative teaching methods which may include applied learning and team teaching strategies;

"(cc) services to prepare students for the transition from school to work, including the formation of partnerships between elementary, middle, and secondary schools and local businesses, and the integration of school-based and work-based learning; and

"(dd) incorporation of gender-equitable methods and practices; and

"(II) address how the school will determine if such needs have been met; and

"(vii) are consistent with, and are designed to implement, the State and local improvement plans, if any, approved under title III of the Goals 2000: Educate America Act.

"(C) Instruction by highly qualified professional staff.

"(D) In accordance with section 1119 and subsection (a)(5), professional development for teachers and aides, and, where appropriate, pupil services personnel, parents, principals, and other staff to enable all children in the school to meet the State's student performance standards.

"(E) Strategies to increase parental involvement, such as family literary services.

"(F) Plans for assisting preschool children in the transition from early childhood programs, such as Head Start, Even Start, or a State-run preschool program, to local elementary school programs.

"(G) Measures to include teachers in the decisions regarding the use of assessments described in section 1112(b)(1) in order to provide information on, and to improve, the performance of individual students and the overall instructional program.

"(H) Activities to ensure that students who experience difficulty mastering any of the standards required by section 1111(b) during the course of the school year shall be provided with effective, timely additional assistance, which shall include—

"(i) measures to ensure that students' difficulties are identified on a timely basis and to provide sufficient information on which to base effective assistance;

"(ii) to the extent the school determines feasible using funds under this part, periodic training for teachers in how to identify such difficulties and to provide assistance to individual students; and

"(iii) for any student who has not met such standards, teacher-parent conferences, at which time the teacher and parents shall discuss—

"(I) what the school will do to help the student meet such standards;

"(II) what the parents can do to help the student improve the student's performance; and

"(III) additional assistance which may be available to the student at the school or elsewhere in the community.

"(2) PLAN.—(A) Any eligible school that desires to operate a schoolwide program shall first develop (or amend a plan for such a program that was in existence before the date of enactment of the Improving America's Schools Act of 1994), in consultation with the local educational agency and its school support team or other technical assistance provider under subsections (c)(1) and (e) of section 1117, a comprehensive plan for reforming the total instructional program in the school that—

"(i) incorporates the components described in paragraph (1);

"(ii) describes how the school will use resources under this part and from other sources to implement those components;

"(iii) includes a list of State and local educational agency programs and other Federal programs under subsection (a)(4) that will be included in the schoolwide program;

"(iv) describes how the school will provide individual student assessment results, including an interpretation of those results, to the parents of a child who participates in the assessment required by section 1111(b)(3);

"(v) provides for the collection of data on the achievement and assessment results of students disaggregated by gender, major ethnic or racial groups, limited English proficiency status, migrant students, and by children with disabilities as compared to other students, and by economically disadvantaged students as compared to students who are not economically disadvantaged;

"(vi) seeks to produce statistically sound results for each category for which assessment results are disaggregated through the use of oversampling or other means; and

"(vii) provides for the public reporting of disaggregated data only when such reporting is statistically sound.

"(B) Plans developed before a State has adopted standards and a set of assessments that meet the criteria in paragraphs (1) and (3) of section 1111(b) shall be based on an analysis of available data on the achievement of students in the school and effective instructional and school improvement practices.

"(C) The comprehensive plan shall be—

"(i) developed during a one-year period, unless—

"(I) the local educational agency, after considering the recommendation of the technical assistance providers under subsections (c) and (e) of section 1117, determines that less time is needed to develop and implement the schoolwide program; or

"(II) the school is operating a schoolwide program on the day preceding the date of enactment of the Improving America's Schools Act of 1994, in which case such school may continue to operate such program, but shall develop a new plan during the first year of assistance under such Act to reflect the provisions of this section;

"(ii) developed with the involvement of the community to be served and individuals who will carry out such plan, including teachers, principals, other staff, and, where appropriate, pupil services personnel, and parents, and, if the plan relates to a secondary school, students from such school;

"(iii) in effect for the duration of the school's participation under this part and reviewed and revised, as necessary, by the school;

"(iv) available to the local educational agency, parents, and the public, and the information contained in such plan shall be translated, to the extent feasible, into any language that a significant percentage of the parents of

participating children in the school speak as their primary language; and

"(v) where appropriate, developed in coordination with programs under the School-to-Work Opportunities Act of 1994, the Carl D. Perkins Vocational and Applied Technology Education Act, and the National and Community Service Act of 1990.

"(c) ACCOUNTABILITY.—A schoolwide program under this section shall be subject to the school improvement provisions of section 1116.

"SEC. 1118. TARGETED ASSISTANCE SCHOOLS.

20 USC 6315

"(a) IN GENERAL.—In all schools selected to receive funds under section 1113(c) that are ineligible for a schoolwide program under section 1114, or that choose not to operate such a schoolwide program, a local educational agency may use funds received under this part only for programs that provide services to eligible children under subsection (b) identified as having the greatest need for special assistance.

"(b) ELIGIBLE CHILDREN.—

"(1) ELIGIBLE POPULATION.—(A) The eligible population for services under this part is—

"(i) children not older than age 21 who are entitled to a free public education through grade 12; and

"(ii) children who are not yet at a grade level where the local educational agency provides a free public education, yet are of an age at which such children can benefit from an organized instructional program provided in a school or other educational setting.

"(B) From the population described in subparagraph (A), eligible children are children identified by the school as failing, or most at risk of failing, to meet the State's challenging student performance standards on the basis of multiple, educationally related, objective criteria established by the local educational agency and supplemented by the school, except that children from preschool through grade two shall be selected solely on the basis of such criteria as teacher judgment, interviews with parents, and developmentally appropriate measures.

"(2) CHILDREN INCLUDED.—(A)(i) Children who are economically disadvantaged, children with disabilities, migrant children or limited English proficient children, are eligible for services under this part on the same basis as other children selected to receive services under this part.

"(ii) Funds received under this part may not be used to provide services that are otherwise required by law to be made available to such children but may be used to coordinate or supplement such services.

"(B) A child who, at any time in the two years preceding the year for which the determination is made, participated in a Head Start or Even Start program, is eligible for services under this part.

"(C)(i) A child who, at any time in the two years preceding the year for which the determination is made, received services under the program for youth who are neglected, delinquent, or at risk of dropping out under part D (or its predecessor authority) may be eligible for services under this part.

"(ii) A child in a local institution for neglected or delinquent children or attending a community day program for such children may be eligible for services under this part.

"(D) A child who is homeless and attending any school in the local educational agency may be eligible for services under this part.

"(c) COMPONENTS OF A TARGETED ASSISTANCE SCHOOL PROGRAM.—

"(1) IN GENERAL.—To assist targeted assistance schools and local educational agencies to meet their responsibility to provide for all their students served under this part the opportunity to meet the State's student performance standards in subjects as determined by the State, each targeted assistance program under this section shall—

"(A) use such program's resources under this part to help participating children meet such State student performance standards expected for all children;

"(B) be based on effective means for improving achievement of children;

"(C) ensure that planning for students served under this part is incorporated into existing school planning;

"(D) use effective instructional strategies that—

"(i) give primary consideration to providing extended learning time such as an extended school year, before- and after-school, and summer, programs and opportunities;

"(ii) help provide an accelerated, high-quality curriculum, including applied learning; and

"(iii) minimize removing children from the regular classroom during regular school hours for instruction provided under this part;

"(E) coordinate with and support the regular education program, which may include—

"(i) counseling, mentoring, and other pupil services;

"(ii) college and career awareness and preparation, such as college and career guidance, comprehensive career development, occupational information, enhancement of employability skills and occupational skills, personal finance education, job placement services, and innovative teaching methods which may include applied learning and team teaching strategies;

"(iii) services to prepare students for the transition from school to work, including the formation of partnerships between elementary, middle, and secondary schools and local businesses, and the integration of school-based and work-based learning; and

"(iv) services to assist preschool children in the transition from early childhood programs to elementary school programs;

"(F) provide instruction by highly qualified staff;

"(G) in accordance with subsection (e)(3) and section 1119, provide opportunities for professional development with resources provided under this part, and from other sources to the extent feasible, for administrators and for teachers and other school staff who work with participating

children in programs under this section or in the regular education program; and

"(H) provide strategies to increase parental involvement, such as family literary services.

"(2) REQUIREMENTS.—Each school conducting a program under this section shall assist participating children selected in accordance with subsection (b) to meet the State's proficient and advanced levels of performance by—

"(A) the coordination of resources provided under this part with other resources to enable the children served to meet the State content standards and State student performance standards; and

"(B) reviewing, on an ongoing basis, the progress of participating children and revising the targeted assistance program, if necessary, to provide additional assistance to enable such children to meet the State's challenging student performance standards, such as an extended school year, before- and after-school, and summer, programs and opportunities, training for teachers regarding how to identify students that require additional assistance, and training for teachers regarding how to implement student performance standards in the classroom.

"(d) ASSIGNMENT OF PERSONNEL.—To promote the integration of staff supported with funds under this part and children served under this part into the regular school program and overall school planning and improvement efforts, public school personnel who are paid with funds received under this part may—

"(1) assume limited duties that are assigned to similar personnel who are not so paid, including duties beyond classroom instruction or that do not benefit participating children, so long as the amount of time spent on such duties is the same proportion of total work time as prevails with respect to similar personnel at the same school;

"(2) participate in general professional development and school planning activities; and

"(3) collaboratively teach with regular classroom teachers, if such collaborative teaching directly benefits participating children.

"(e) SPECIAL RULES.—

"(1) SIMULTANEOUS SERVICE.—Nothing in this section shall be construed to prohibit a school from serving students served under this section simultaneously with students with similar educational needs, in the same educational settings where appropriate.

"(2) COMPREHENSIVE SERVICES.—If health, nutrition, and other social services are not otherwise available to eligible children in a targeted assistance school and such school, if appropriate, has engaged in a comprehensive needs assessment and established a collaborative partnership with local service providers, and if funds are not reasonably available from other public or private sources to provide services under this part, then a portion of the funds provided under this part may be used as a last resort to provide such services, including—

"(A) the provision of basic medical equipment, such as eyeglasses and hearing aids;

"(B) compensation of a coordinator; and

"(C) professional development necessary to assist teachers, pupil services personnel, other staff, and parents in identifying and meeting the comprehensive needs of eligible children.

"(3) PROFESSIONAL DEVELOPMENT.—Each school receiving funds under this part for any fiscal year shall devote sufficient resources to effectively carry out the professional development activities described in subparagraph (G) of subsection (c)(1) in accordance with section 1119, for such fiscal year, except that a school may enter into a consortium with another school to carry out such activities.

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"SEC. 1115A. SCHOOL CHOICE.

"(a) CHOICE PROGRAMS.—A local educational agency may use funds under this part, in combination with State, local, and private funds, to develop and implement choice programs, for children eligible for assistance under this part, which permit parents to select the public school that their children will attend.

"(b) CHOICE PLAN.—A local educational agency that chooses to implement a school choice plan shall first develop a comprehensive plan that includes assurances that—

"(1) all eligible students across grade levels will have equal access to the program;

"(2) the program does not include schools which follow a racially discriminatory policy;

"(3) describe how the school will use resources under this part and from other sources to implement the plan;

"(4) describe how the school will provide individual student assessment results, including an interpretation of such results, to the parents of a child who participates in the assessment required by section 1111(b)(3);

"(5) the plan will be developed with the involvement of the community to be served and individuals who will carry out the plan, including teachers, principals, and other staff, parents, and, if the plan relates to a secondary school, students from the school;

"(6) the plan will be made available to parents and the public;

"(7) the program will not include schools that do not receive funds under this part;

"(8) the program will not use funds under this part to pay for transportation costs;

"(9) both the sending and receiving schools agree to the student transfer; and

"(10) such local educational agency will comply with the other requirements of this part.

"SEC. 1116. ASSESSMENT AND LOCAL EDUCATIONAL AGENCY AND SCHOOL IMPROVEMENT.

"(a) LOCAL REVIEW.—Each local educational agency receiving funds under this part shall—

"(1) use the State assessments described in the State plan;

"(2) use any additional measures or indicators described in the local educational agency's plan to review annually the progress of each school served under this part to determine whether the school is meeting, or making adequate progress as defined in section 1111(b)(2)(A)(i) toward enabling its stu-

dents to meet the State's student performance standards described in the State plan;

"(3) publicize and disseminate to teachers and other staff, parents, students, and the community, the results of the annual review under paragraph (2) of all schools served under this part in individual school performance profiles that include statistically sound disaggregated results as required by section 1111(b)(3)(I); and

"(4) provide the results of the local annual review to schools so that the schools can continually refine the program of instruction to help all children served under this part in those schools meet the State's student performance standards.

"(b) DESIGNATION OF DISTINGUISHED SCHOOLS.—Each State educational agency and local educational agency receiving funds under this part shall designate distinguished schools in accordance with section 1117.

"(c) SCHOOL IMPROVEMENT.—

"(1) IN GENERAL.—A local educational agency shall identify for school improvement any school served under this part that—

"(A) has been in program improvement under section 1020 of the Elementary and Secondary Education Act of 1965 (as such section was in effect on the day preceding the date of enactment of the Improving America's Schools Act of 1994), for at least two consecutive school years prior to such day;

"(B) has not made adequate progress as defined in the State's plan under section 1111(b)(2)(A)(i) for two consecutive school years, except that—

"(i) this subparagraph shall not apply to a school if almost every student in such school is meeting the State's advanced level of performance; or

"(ii) in the case of a targeted assistance school, such school may be reviewed on the progress of only those students that have been or are served under this part; or

"(C) has failed to meet the criteria established by the State through the State's transitional procedure under section 1111(b)(7)(B) for two consecutive years.

"(2) REQUIREMENT.—(A) Each school identified under paragraph (1) shall—

"(i) in consultation with parents, the local educational agency, and the school support team, develop or revise a school plan in ways that have the greatest likelihood of improving the performance of participating children in meeting the State's student performance standards, which may include reviewing the schools' plan in the context of the opportunity-to-learn standards or strategies developed by such State under the Goals 2000: Educate America Act; and

"(ii) submit the plan or revised plan to the local educational agency for approval.

"(B) Before identifying a school for school improvement under paragraph (1), the local educational agency shall provide the school with an opportunity to review the school-level data, including assessment data, on which such identification is based. If the school believes that such identification for school improvement is in error for statistical or other substantive

reasons, such school may provide evidence to the local educational agency to support such belief.

"(C) During the first year immediately following such identification, the school shall implement such school's plan or revised plan.

"(3) PROFESSIONAL DEVELOPMENT.—(A) Each school identified under paragraph (1) shall, as part of the school plan under paragraph (2), improve the skills of its staff by providing effective professional development activities. A school shall demonstrate such school's compliance with this paragraph by—

"(i) devoting to such activities, over two consecutive years, an amount equivalent to at least 10 percent of the funds received by the school under this part during one fiscal year; or

"(ii) otherwise demonstrating that such school is effectively carrying out professional development activities.

"(B) A school may use funds from any source to meet the requirements of this subsection.

"(C) Decisions about how to use the funds made available under this part which the school makes available for professional development shall be made by teachers, principals, and other school staff in that school.

"(4) TECHNICAL ASSISTANCE.—(A) For each school identified under paragraph (1), the local educational agency shall provide technical or other assistance as the school develops and implements such school's plan or revised plan, such as a joint plan between the local educational agency and school that addresses specific elements of student performance problems and that specifies school and local educational agency responsibilities under the plan, and waivers or modifications of requirements of local educational agency policy or regulation that impede the ability of the school to educate students.

"(B) Such technical assistance may be provided directly by the local educational agency, through mechanisms authorized under section 1117, or with the local educational agency's approval, by an institution of higher education, a private nonprofit organization, an educational service agency, a comprehensive regional assistance center under part A of title XIII, or other entities with experience in helping schools improve achievement.

"(5) CORRECTIVE ACTION.—(A) Except as provided in subparagraph (C), after providing technical assistance pursuant to paragraph (4) and taking other remediation measures, the local educational agency may take corrective action at any time against a school that has been identified under paragraph (1), but, during the third year following identification under paragraph (1), shall take such action against any school that still fails to make adequate progress.

"(B)(i) Corrective actions are those, consistent with State and local law, determined and made public and disseminated by the local educational agency, which may include—

"(I) withholding funds;

"(II) interagency collaborative agreements between the school and other public agencies to provide health, counseling, and other social services needed to remove barriers to learning;

"(III) revoking authority for a school to operate a schoolwide program;

"(IV) decreasing decisionmaking authority at the school level;

"(V) making alternative governance arrangements such as the creation of a public charter school;

"(VI) reconstituting the school staff;

"(VII) authorizing students to transfer, including transportation costs, to other public schools served by the local educational agency; and

"(VIII) implementing opportunity-to-learn standards or strategies developed by such State under the Goals 2000: Educate America Act.

"(ii) Notwithstanding clause (i), corrective actions taken pursuant to this part shall not include the actions described in subclause (I), (III), (IV), (VI), or (VII) of clause (i) until the State has developed assessments that meet the requirements of subparagraph (C) of section 1111(b)(3).

"(C) Prior to implementing any corrective action, the local educational agency may refrain from such corrective action for one additional year to the extent that the failure to make progress can be attributed to extenuating circumstances as determined by the local educational agency.

"(D) A school that is no longer operating its schoolwide program due to a corrective action may not resume operation of such a program until the local educational agency determines that the school has adequately reformed its schoolwide program plan to enable the school to make adequate progress toward meeting the State's challenging student performance standards.

"(6) STATE EDUCATIONAL AGENCY RESPONSIBILITIES.—The State educational agency shall—

"(A) make technical assistance under section 1117 available to the schools farthest from meeting the State's challenging student performance standards, if requested by the school or local educational agency; and

"(B) if such agency determines that a local educational agency failed to carry out the local educational agency's responsibilities under paragraphs (4) and (5), take such corrective actions as the State educational agency deems appropriate and which are in compliance with State law.

"(7) SPECIAL RULE.—Schools that, for at least two of the three years following identification under paragraph (1), make adequate progress toward meeting the State's proficient and advanced levels of performance shall no longer need to be identified for school improvement.

"(d) STATE REVIEW AND LOCAL EDUCATIONAL AGENCY IMPROVEMENT.—

"(1) IN GENERAL.—A State educational agency shall—

"(A) annually review the progress of each local educational agency receiving funds under this part to determine whether schools receiving assistance under this part are making adequate progress as defined in section 1111(b)(2)(A)(ii) toward meeting the State's student performance standards; and

"(B) publicize and disseminate to local educational agencies, teachers and other staff, parents, students, and the community the results of the State review, including

statistically sound disaggregated results, as required by section 1111(b)(3)(I).

"(2) REWARDS.—In the case of a local educational agency that for three consecutive years has met or exceeded the State's definition of adequate progress as defined in section 1111(b)(2)(A)(ii), the State may make institutional and individual rewards of the kinds described for individual schools in paragraph (2) of section 1117(c).

"(3) IDENTIFICATION.—(A) A State educational agency shall identify for improvement any local educational agency that—

"(i) for two consecutive years, is not making adequate progress as defined in section 1111(b)(2)(A)(ii) in schools served under this part toward meeting the State's student performance standards, except that schools served by the local educational agency that are operating targeted assistance programs may be reviewed on the basis of the progress of only those students served under this part; or

"(ii) has failed to meet the criteria established by the State through such State's transitional procedure under section 1111(b)(7)(B) for two consecutive years.

"(B) Before identifying a local educational agency for improvement under paragraph (1), the State educational agency shall provide the local educational agency with an opportunity to review the school-level data, including assessment data, on which such identification is based. If the local educational agency believes that such identification for improvement is in error due to statistical or other substantive reasons, such local educational agency may provide evidence to the State educational agency to support such belief.

"(4) LOCAL EDUCATIONAL AGENCY REVISIONS.—(A) Each local educational agency identified under paragraph (3) shall, in consultation with schools, parents, and educational experts, revise its local educational agency plan under section 1112 in ways that have the greatest likelihood of improving the performance of schools served by the local educational agency under this part in meeting the State's student performance standards.

"(B) Such revision shall include determining why the local educational agency's plan failed to bring about increased achievement, and may include reviewing the local educational agency's plan in the context of the opportunity-to-learn standards or strategies developed by such State under the Goals 2000: Educate America Act.

"(5) STATE EDUCATIONAL AGENCY RESPONSIBILITY.—(A) For each local educational agency identified under paragraph (3), the State educational agency shall—

"(i) provide technical or other assistance, if requested, as authorized under section 1117, to better enable the local educational agency to—

"(I) develop and implement the local educational agency's revised plan; and

"(II) work with schools needing improvement; and

"(ii) make available to the local educational agencies farthest from meeting the State's standards, if requested, assistance under section 1117.

"(B) Technical or other assistance may be provided by the State educational agency directly, or by an institution of

higher education, a private nonprofit organization, an educational service agency or other local consortium, a technical assistance center, or other entities with experience in assisting local educational agencies improve achievement, and may include—

"(i) interagency collaborative agreements between the local educational agency and other public agencies to provide health, pupil services, and other social services needed to remove barriers to learning; and

"(ii) waivers or modification of requirements of State law or regulation (in States in which such waivers are permitted) that impede the ability of a local educational agency to educate students.

"(6) CORRECTIVE ACTION.—(A) Except as provided in subparagraph (C), after providing technical assistance pursuant to paragraph (5) and taking other remediation measures, the State educational agency may take corrective action at any time against a local educational agency that has been identified under paragraph (3), but, during the fourth year following identification under paragraph (3), shall take such action against any local educational agency that still fails to make adequate progress.

"(B)(i) Corrective actions are those actions, consistent with State law, determined and made public and disseminated by the State educational agency, which may include—

"(I) the withholding of funds;

"(II) reconstitution of school district personnel;

"(III) removal of particular schools from the jurisdiction of the local educational agency and establishment of alternative arrangements for public governance and supervision of such schools;

"(IV) implementation of the opportunity-to-learn standards or strategies developed by such State under the Goals 2000: Educate America Act;

"(V) appointment by the State educational agency of a receiver or trustee to administer the affairs of the local educational agency in place of the superintendent and school board;

"(VI) the abolition or restructuring of the local educational agency;

"(VII) the authorizing of students to transfer from a school operated by one local educational agency to a school operated by another local educational agency; and

"(VIII) a joint plan between the State and the local educational agency that addresses specific elements of student performance problems and that specifies State and local responsibilities under the plan.

"(ii) Notwithstanding clause (i), corrective actions taken pursuant to this part shall not include the actions described in subclauses (I), (II), and (III) of clause (i) until the State has developed assessments that meet the requirements of paragraph (3)(C) of section 1111(b).

"(C) Prior to implementing any corrective action, the State educational agency shall provide due process and a hearing (if State law provides for such due process and a hearing) to any local educational agency identified under paragraph (3) and may refrain from such corrective action for one year

after the four-year period described in subparagraph (A) to the extent that the failure to make progress can be attributed to such extenuating circumstances as determined by the State educational agency.

"(7) SPECIAL RULE.—Local educational agencies that for at least two of the three years following identification under paragraph (3) make adequate progress toward meeting the State's standards no longer need to be identified for local educational agency improvement.

"(e) CONSTRUCTION.—Nothing in this section shall be construed to alter or otherwise affect the rights, remedies, and procedures afforded school or school district employees under Federal, State, or local laws (including applicable regulations or court orders) or under the terms of collective bargaining agreements, memoranda of understanding, or other agreements between such employees and their employers.

30 USC 6318

"SEC. 1117. STATE ASSISTANCE FOR SCHOOL SUPPORT AND IMPROVEMENT.

"(a) SYSTEM FOR SUPPORT.—

"(1) STATE SUPPORT.—Each State educational agency shall establish a statewide system of intensive and sustained support and improvement for schools receiving funds under this part, including schoolwide programs and schools in need of program improvement, in order to increase the opportunity for all students in such schools to meet the State's content standards and student performance standards.

"(2) MEETING REQUIREMENTS.—Funds reserved under section 1003(a) or appropriated under section 1002(f) shall be used to meet the requirements of this section. In addition to such funds a State educational agency may use State administrative funds reserved under section 1603(c) to meet such requirements.

"(b) REGIONAL CENTERS.—Such a statewide system shall work with and receive support and assistance from the comprehensive regional technical assistance centers under part A of title XIII and the educational regional laboratories under section 941(h) of the Educational Research, Development, Dissemination, and Improvement Act of 1994.

"(c) PROVISIONS.—The system shall include at a minimum, the following:

"(1) SCHOOL SUPPORT TEAMS.—

"(A) Each State educational agency, in consultation with local educational agencies and schools, shall establish a system of school support teams to provide information and assistance to schoolwide programs and to assist such programs in providing an opportunity to all students to meet the State's student performance standards.

"(B) If funds are sufficient, school support teams shall provide information and assistance to—

"(i) schools—

"(I) in which the number of students in poverty is equal to or greater than 75 percent of the total number of students enrolled in such school; and

"(II) identified as in need of improvement under section 1116(c)(1); and

"(ii) other schools in need of improvement.

"(C) Each such team shall be composed of persons, including teachers, pupil services personnel, representatives of organizations knowledgeable about successful schoolwide projects or comprehensive school reform (especially distinguished educators described in paragraph (3)), and other persons who are knowledgeable about research and practice on teaching and learning, particularly about strategies for improving the educational opportunities for low-achieving students (including alternative and applied learning), such as representatives of institutions of higher education, regional educational laboratories or research centers, and outside consultant groups.

"(D) A school support team shall work cooperatively with each school and make recommendations as the school develops the school's schoolwide program plan or school improvement plan, review each plan, and make recommendations to the school and the local educational agency.

"(E) During the operation of the schoolwide program or during school improvement activities, a school support team shall—

"(i) periodically review the progress of the school in enabling children in the school to meet the State's student performance standards under this part;

"(ii) identify problems in the design and operation of the instructional program; and

"(iii) make recommendations for improvement to the school and the local educational agency.

"(2) DISTINGUISHED SCHOOLS.—

"(A) Each State shall designate as a distinguished school any school served under this part which, for three consecutive years, has exceeded the State's definition of adequate progress as defined in section 1111(b)(2)(A)(i), and, any school in which—

"(i) virtually all students have met the State's advanced level of student performance; and

"(ii) equity in participation and achievement of students by sex has been achieved or significantly improved.

"(B) Schools designated under this paragraph may serve as models and provide support to other schools, especially schoolwide programs and schools in school improvement, to assist such schools in meeting the State's student performance standards.

"(C) States shall use funds reserved under section 1003(a) and funds made available under section 1002(f) to allow schools identified under this paragraph to carry out the activities described in subparagraph (B) and may use such funds to provide awards to such schools to further such school's education programs under this part, provide additional incentives for continued success, and reward individuals or groups in the school for exemplary performance.

"(D) A local educational agency may also recognize the success of a distinguished school by providing additional institutional and individual rewards, such as greater decisionmaking authority at the school building level,

increased access to resources or supplemental services such as summer programs that may be used to sustain or increase success, additional professional development opportunities, opportunities to participate in special projects, and individual financial bonuses.

"(3) DISTINGUISHED EDUCATORS.—

"(A) In order to provide assistance to schools and local educational agencies identified as needing improvement and schools participating in schoolwide programs, each State, in consultation with local educational agencies and using funds reserved under section 1003(a) and made available under section 1002(f), shall establish a corps of distinguished educators.

"(B) When possible, distinguished educators shall be chosen from schools served under this part that have been especially successful in enabling children to meet or make outstanding progress toward meeting the State's student performance standards, such as the schools described in paragraph (2).

"(C) Distinguished educators shall provide, as part of the statewide system, intensive and sustained assistance to the schools and local educational agencies farthest from meeting the State's student performance standards and to schoolwide programs as such programs develop and implement their plans, including participation in the support teams described in paragraph (1).

"(d) IMPLEMENTATION.—In order to implement this section funds reserved under section 1003(a) and funds made available under section 1002(f) may be used by a State for release time for teachers and administrators, travel, training, and other related costs.

"(e) ALTERNATIVES.—The State may devise additional approaches to providing the assistance described in paragraphs (1) and (3) of subsection (c), such as providing assistance through institutions of higher education and educational service agencies or other local consortia, and the State may seek approval from the Secretary to use funds reserved under section 1003 and funds made available under section 1002(f) for such approaches as part of the State plan.

"SEC. 1118. PARENTAL INVOLVEMENT.

"(a) LOCAL EDUCATIONAL AGENCY POLICY.—

"(1) IN GENERAL.—A local educational agency may receive funds under this part only if such agency implements programs, activities, and procedures for the involvement of parents in programs assisted under this part consistent with the provisions of this section. Such activities shall be planned and implemented with meaningful consultation with parents of participating children.

"(2) WRITTEN POLICY.—Each local educational agency that receives funds under this part shall develop jointly with, agree upon with, and distribute to, parents of participating children a written parent involvement policy that is incorporated into the local educational agency's plan developed under section 1112, establishes the expectations for parent involvement, and describes how the local educational agency will—

"(A) involve parents in the joint development of the plan under section 1112, and the process of school review and improvement under section 1116;

"(B) provide the coordination, technical assistance, and other support necessary to assist participating schools in planning and implementing effective parent involvement;

"(C) build the schools' and parents' capacity for strong parent involvement as described in subsection (e);

"(D) coordinate and integrate parental involvement strategies under this part with parental involvement strategies under other programs, such as Head Start, Even Start, the Parents as Teachers Program, the Home Instruction Program for Preschool Youngsters, and State-run preschool programs;

"(E) conduct, with the involvement of parents, an annual evaluation of the content and effectiveness of the parental involvement policy developed under this section—

"(i) to determine the effectiveness of the policy in increasing the participation of parents; and

"(ii) to identify barriers to greater participation by parents in activities authorized by this section, giving particular attention to parents who are economically disadvantaged, are disabled, have limited English proficiency, have limited literacy, or are of any racial or ethnic minority background; and

"(F) use the findings of the evaluations described in subparagraph (E) in designing strategies for school improvement and revising, if necessary, the parental involvement policies described in this subsection and subsection (b)(1).

"(3) RESERVATION.—(A) Each local educational agency shall reserve not less than 1 percent of such agency's allocation under this part to carry out this section, including family literacy and parenting skills, except that this paragraph shall not apply if 1 percent of such agency's allocation under this part (other than funds allocated under section 1002(e)) for the fiscal year for which the determination is made is \$5,000 or less.

"(B) Parents of children receiving services under this part shall be involved in the decisions regarding how funds reserved under subparagraph (A) are allotted for parental involvement activities.

"(b) SCHOOL PARENTAL INVOLVEMENT POLICY.—

"(1) IN GENERAL.—Each school served under this part shall jointly develop with, and distribute to, parents of participating children a written parental involvement policy, agreed upon by such parents, that shall describe the means for carrying out the requirements of subsections (c) through (f). Such policy shall be updated periodically to meet the changing needs of parents and the school.

"(2) SPECIAL RULE.—If the school has a parental involvement policy that applies to all parents, such school may amend that policy, if necessary, to meet the requirements of this subsection.

"(3) AMENDMENT.—If the local educational agency has a school district-level parental involvement policy that applies

to all parents, such agency may amend that policy, if necessary, to meet the requirements of this subsection.

"(4) PARENTAL COMMENTS.—If the plan under section 1112 is not satisfactory to the parents of participating children, the local educational agency shall submit any parent comments with such plan when such local educational agency submits the plan to the State.

"(c) POLICY INVOLVEMENT.—Each school served under this part shall—

"(1) convene an annual meeting, at a convenient time, to which all parents of participating children shall be invited and encouraged to attend, to inform parents of their school's participation under this part and to explain this part, its requirements, and their right to be involved;

"(2) offer a flexible number of meetings, such as meetings in the morning or evening, and may provide, with funds provided under this part, transportation, child care, or home visits, as such services relate to parental involvement;

"(3) involve parents, in an organized, ongoing, and timely way, in the planning, review, and improvement of programs under this part, including the school parental involvement policy and the joint development of the schoolwide program plan under section 1114(b), except that if a school has in place a process for involving parents in the joint planning and design of its programs, the school may use that process, if such process includes an adequate representation of parents of participating children;

"(4) provide parents of participating children—

"(A) timely information about programs under this part;

"(B) school performance profiles required under section 1116(a)(3) and their child's individual student assessment results, including an interpretation of such results, as required under section 1111(b)(3)(H);

"(C) a description and explanation of the curriculum in use at the school, the forms of assessment used to measure student progress, and the proficiency levels students are expected to meet;

"(D) opportunities for regular meetings to formulate suggestions, share experiences with other parents, and participate as appropriate in decisions relating to the education of their children if such parents so desire; and

"(E) timely responses to parents' suggestions under subparagraph (D); and

"(5) if the schoolwide program plan under section 1114(b)(2) is not satisfactory to the parents of participating children, submit any parent comments on the plan when the school makes the plan available to the local educational agency.

"(d) SHARED RESPONSIBILITIES FOR HIGH STUDENT PERFORMANCE.—As a component of the school-level parental involvement policy developed under subsection (b), each school served under this part shall jointly develop with parents for all children served under this part a school-parent compact that outlines how parents, the entire school staff, and students will share the responsibility for improved student achievement and the means by which the school and parents will build and develop a partnership to help children achieve the State's high standards. Such compact shall—

"(1) describe the school's responsibility to provide high-quality curriculum and instruction in a supportive and effective learning environment that enables the children served under this part to meet the State's student performance standards, and the ways in which each parent will be responsible for supporting their children's learning, such as monitoring attendance, homework completion, and television watching; volunteering in their child's classroom; and participating, as appropriate, in decisions relating to the education of their children and positive use of extracurricular time; and

"(2) address the importance of communication between teachers and parents on an ongoing basis through, at a minimum—

"(A) parent-teacher conferences in elementary schools, at least annually, during which the compact shall be discussed as the compact relates to the individual child's achievement;

"(B) frequent reports to parents on their children's progress; and

"(C) reasonable access to staff, opportunities to volunteer and participate in their child's class, and observation of classroom activities.

"(e) BUILDING CAPACITY FOR INVOLVEMENT.—To ensure effective involvement of parents and to support a partnership among the school, parents, and the community to improve student achievement, each school and local educational agency—

"(1) shall provide assistance to participating parents in such areas as understanding the National Education Goals, the State's content standards and State student performance standards, the provisions of section 1111(b)(8), State and local assessments, the requirements of this part, and how to monitor a child's progress and work with educators to improve the performance of their children as well as information on how parents can participate in decisions relating to the education of their children;

"(2) shall provide materials and training, such as—

"(A) coordinating necessary literacy training from other sources to help parents work with their children to improve their children's achievement; and

"(B) training to help parents to work with their children to improve their children's achievement;

"(3) shall educate teachers, pupil services personnel, principals and other staff, with the assistance of parents, in the value and utility of contributions of parents, and in how to reach out to, communicate with, and work with parents as equal partners, implement and coordinate parent programs, and build ties between home and school;

"(4) shall coordinate and integrate parent involvement programs and activities with Head Start, Even Start, the Home Instruction Programs for Preschool Youngsters, the Parents as Teachers Program, and public preschool programs and other programs, to the extent feasible and appropriate;

"(5) shall develop appropriate roles for community-based organizations and businesses in parent involvement activities, including providing information about opportunities for organizations and businesses to work with parents and schools, and encouraging the formation of partnerships between

elementary, middle, and secondary schools and local businesses that include a role for parents;

"(6) shall conduct other activities, as appropriate and feasible, such as parent resource centers and providing opportunities for parents to learn about child development and child rearing issues beginning at the birth of a child, that are designed to help parents become full partners in the education of their children;

"(7) shall ensure, to the extent possible, that information related to school and parent programs, meetings, and other activities is sent to the homes of participating children in the language used in such homes;

"(8) may involve parents in the development of training for teachers, principals, and other educators to improve the effectiveness of such training in improving instruction and services to the children of such parents;

"(9) may provide necessary literacy training from funds received under this part if the local educational agency has exhausted all other reasonably available sources of funding for such activities;

"(10) may pay reasonable and necessary expenses associated with local parental involvement activities, including transportation and child care costs, to enable parents to participate in school-related meetings and training sessions;

"(11) may train and support parents to enhance the involvement of other parents;

"(12) may arrange meetings at a variety of times, such as in the mornings and evenings, in order to maximize the opportunities for parents to participate in school related activities;

"(13) may arrange for teachers or other educators, who work directly with participating children, to conduct in-home conferences with parents who are unable to attend such conferences at school;

"(14) may adopt and implement model approaches to improving parental involvement, such as Even Start; and

"(15) shall provide such other reasonable support for parental involvement activities under this section as parents may request.

"(f) ACCESSIBILITY.—In carrying out the parental involvement requirements of this part, local educational agencies and schools, to the extent practicable, shall provide full opportunities for the participation of parents with limited English proficiency or with disabilities, including providing information and school profiles in a language and form such parents understand.

"(g) PARENTAL INFORMATION AND RESOURCE CENTERS.—In States where parental information and resource centers have been established pursuant to section 401 of the Goals 2000: Educate America Act of 1994 (to provide training, information, and support to parents and individuals who work with parents), local educational agencies and schools receiving assistance under this part shall assist parents and parent organizations by informing such parents and organizations of the existence and purpose of such centers, providing such parents and organizations with a description of the services and programs provided by such centers, advising parents on how to use such centers, and helping parents to contact such centers.

"SEC. 1119. PROFESSIONAL DEVELOPMENT.

"(a) PROGRAM REQUIREMENTS.—

"(1) IN GENERAL.—Each local educational agency receiving assistance under this part shall provide high-quality professional development that will improve the teaching of the academic subjects, consistent with the State content standards, in order to enable all children to meet the State's student performance standards.

"(2) PROGRAM DESIGN.—Such professional development activities shall be designed by principals, teachers, and other school staff in schools receiving assistance under this part.

"(b) PROFESSIONAL DEVELOPMENT ACTIVITIES.—

"(1) REQUIRED ACTIVITIES.—Such professional development activities shall—

"(A) support instructional practices that are geared to challenging State content standards and create a school environment conducive to high achievement in the academic subjects;

"(B) support local educational agency plans under section 1112 and school plans under section 1114;

"(C) draw on resources available under this part, title III of the Goals 2000: Educate America Act, title II of this Act, and from other sources;

"(D) where appropriate, as determined by the local educational agency, include strategies for developing curricula and teaching methods that integrate academic and vocational instruction (including applied learning and team teaching strategies); and

"(E) include strategies for identifying and eliminating gender and racial bias in instructional materials, methods, and practices.

"(2) OPTIONAL ACTIVITIES.—Such professional development activities may include—

"(A) instruction in the use of assessments;

"(B) instruction in ways that teachers, principals, pupil services personnel, and school administrators may work more effectively with parents;

"(C) the forming of partnerships with institutions of higher education to establish school-based teacher training programs that provide prospective teachers and novice teachers with an opportunity to work under the guidance of experienced teachers and college faculty;

"(D) instruction in the use of technology;

"(E) the creation of career ladder programs for paraprofessionals (assisting teachers under this part) to obtain the education necessary for such paraprofessionals to become licensed and certified teachers;

"(F) instruction in ways to teach special needs children;

"(G) instruction in gender-equitable education methods, techniques, and practices;

"(H) joint professional development activities involving programs under this part, Head Start, Even Start, or State-run preschool program personnel; and

"(I) instruction in experiential-based teaching methods such as service learning.

"(c) PROGRAM PARTICIPATION.—Each local educational agency receiving assistance under this part is encouraged to design professional development programs so that—

"(1) all school staff in schools participating in a schoolwide program under section 1114 can participate in professional development activities; and

"(2) all school staff in targeted assistance schools may participate in professional development activities if such participation will result in better addressing the needs of students served under this part.

"(d) PARENTAL PARTICIPATION.—Parents may participate in professional development activities under this part if the school determines that parental participation is appropriate.

"(e) CONSORTIA.—In carrying out such professional development programs, local educational agencies may provide services through consortia arrangements with other local educational agencies, educational service agencies or other local consortia, institutions of higher education, or other public or private institutions or organizations.

"(f) EFFECTIVE TEACHING STRATEGIES.—Knowledge of effective teaching strategies that is gained through professional development activities under this section may be shared with teachers who are not participating in targeted assistance programs under this part.

"(g) COMBINATIONS OF FUNDS.—Funds provided under this part that are used for professional development purposes may be combined with funds provided under title II of this Act, title III of the Goals 2000: Educate America Act, and other sources.

"(h) STATE REVIEW.—

"(1) IN GENERAL.—The State educational agency shall review the local educational agency's plan under section 1112(b) to determine if such agency's professional development activities—

"(A) are tied to challenging State student content and student performance standards;

"(B) reflect research on teaching and learning where possible;

"(C) are designed to have a positive impact on the teacher's performance in the classroom;

"(D) contribute to continuous improvement in the classroom or throughout the school;

"(E) include methods to teach children with special needs;

"(F) are developed with the extensive participation of teachers; and

"(G) include gender-equitable education methods, techniques, and practices.

"(2) TECHNICAL ASSISTANCE.—If a local educational agency's plan for professional development does not include the activities described in paragraph (1), the State educational agency shall provide technical assistance to such local educational agencies to enable such agencies to make progress toward inclusion of such activities in the local educational agency's professional development activities.

"(3) SPECIAL RULE.—No State educational agency shall require a school or a local educational agency to expend a specific amount of funds for professional development activities

under this part, except that this paragraph shall not apply with respect to requirements under section 1116(d)(6).

"(i) INSTRUCTIONAL AIDES.—

"(1) IN GENERAL.—If a local educational agency uses funds received under this part to employ instructional aides, the local educational agency shall ensure that such aides—

"(A) possess the knowledge and skills sufficient to assist participating children in meeting the educational goals of this part;

"(B) have a secondary school diploma, or its recognized equivalent, or earn either within two years of employment, except that a local educational agency may employ an instructional aide that does not meet the requirement of this subparagraph if such aide possesses proficiency in a language other than English that is needed to enhance the participation of children in programs under this part; and

"(C) are under the direct supervision of a teacher who has primary responsibility for providing instructional services to eligible children.

"(2) INCLUSION IN ACTIVITIES.—Each local educational agency receiving funds under this part, when feasible, shall include instructional aides in professional development activities.

"SEC. 1120. PARTICIPATION OF CHILDREN ENROLLED IN PRIVATE SCHOOLS. 20 USC 6321.

"(a) GENERAL REQUIREMENT.—

"(1) IN GENERAL.—To the extent consistent with the number of eligible children identified under section 1115(b) in a local educational agency who are enrolled in private elementary and secondary schools, a local educational agency shall, after timely and meaningful consultation with appropriate private school officials, provide such children, on an equitable basis, special educational services or other benefits under this part (such as dual enrollment, educational radio and television, computer equipment and materials, other technology, and mobile educational services and equipment).

"(2) SECULAR, NEUTRAL, NONIDEOLOGICAL.—Such educational services or other benefits, including materials and equipment, shall be secular, neutral, and nonideological.

"(3) EQUITY.—Educational services and other benefits for such private school children shall be equitable in comparison to services and other benefits for public school children participating under this part.

"(4) EXPENDITURES.—Expenditures for educational services and other benefits to eligible private school children shall be equal to the proportion of funds allocated to participating school attendance areas based on the number of children from low-income families who attend private schools.

"(5) PROVISION OF SERVICES.—The local educational agency may provide such services directly or through contracts with public and private agencies, organizations, and institutions.

"(b) CONSULTATION.—

"(1) IN GENERAL.—To ensure timely and meaningful consultation, a local educational agency shall consult with appropriate private school officials during the design and devel-

opment of such agency's programs under this part, on issues such as—

- "(A) how the children's needs will be identified;
- "(B) what services will be offered;
- "(C) how and where the services will be provided;
- "(D) how the services will be assessed; and
- "(E) the size and scope of the equitable services to be provided to the eligible private school children, and what is the proportion of funds allocated under subsection (a)(4) for such services.

"(2) TIMING.—Such consultation shall occur before the local educational agency makes any decision that affects the opportunities of eligible private school children to participate in programs under this part.

"(3) DISCUSSION.—Such consultation shall include a discussion of service delivery mechanisms a local educational agency can use to provide equitable services to eligible private school children.

"(c) PUBLIC CONTROL OF FUNDS.—

"(1) IN GENERAL.—The control of funds provided under this part, and title to materials, equipment, and property purchased with such funds, shall be in a public agency, and a public agency shall administer such funds and property.

"(2) PROVISION OF SERVICES.—(A) The provision of services under this section shall be provided—

- "(i) by employees of a public agency; or
- "(ii) through contract by such public agency with an individual, association, agency, or organization.

"(B) In the provision of such services, such employee, person, association, agency, or organization shall be independent of such private school and of any religious organization, and such employment or contract shall be under the control and supervision of such public agency.

"(d) STANDARDS FOR A BYPASS.—If a local educational agency is prohibited by law from providing for the participation on an equitable basis of eligible children enrolled in private elementary and secondary schools or if the Secretary determines that a local educational agency has substantially failed or is unwilling to provide for such participation, as required by this section, the Secretary shall—

"(1) waive the requirements of this section for such local educational agency; and

"(2) arrange for the provision of services to such children through arrangements that shall be subject to the requirements of this section and sections 14505 and 14506.

"(e) CAPITAL EXPENSES.—

"(1) IN GENERAL.—(A) From the amount appropriated for this subsection under section 1002(e) for any fiscal year, each State is eligible to receive an amount that bears the same ratio to the amount so appropriated as the number of private school children who received services under this part in the State in the most recent year for which data satisfactory to the Secretary are available bears to the number of such children in all States in that same year.

"(B) The Secretary shall reallocate any amounts allocated under subparagraph (A) that are not used by a State for the

purpose of this subsection to other States on the basis of their respective needs, as determined by the Secretary.

"(2) CAPITAL EXPENSES.—(A) A local educational agency may apply to the State educational agency for payments for capital expenses consistent with this subsection.

"(B) State educational agencies shall distribute such funds under this subsection to local educational agencies based on the degree of need set forth in their respective applications for assistance under this subsection.

"(3) USES OF FUNDS.—Any funds appropriated to carry out this subsection shall be used only for capital expenses incurred to provide equitable services for private school children under this section.

"(4) DEFINITION.—For the purpose of this subsection, the term 'capital expenses' means—

"(A) expenditures for noninstructional goods and services, such as the purchase, lease, or renovation of real and personal property, including mobile educational units and leasing of neutral sites or spaces;

"(B) insurance and maintenance costs;

"(C) transportation; and

"(D) other comparable goods and services.

"SEC. 1120A. FISCAL REQUIREMENTS.

20 USC 6322

"(a) MAINTENANCE OF EFFORT.—A local educational agency may receive funds under this part for any fiscal year only if the State educational agency finds that the local educational agency has maintained its fiscal effort in accordance with section 14501 of this Act.

"(b) FEDERAL FUNDS TO SUPPLEMENT, NOT SUPPLANT, NON-FEDERAL FUNDS.—

"(1) IN GENERAL.—(A) Except as provided in subparagraph (B), a State or local educational agency shall use funds received under this part only to supplement the amount of funds that would, in the absence of such Federal funds, be made available from non-Federal sources for the education of pupils participating in programs assisted under this part, and not to supplant such funds.

"(B) For the purpose of complying with subparagraph (A), a State or local educational agency may exclude supplemental State and local funds expended in any eligible school attendance area or school for programs that meet the requirements of section 1114 or 1115.

"(2) SPECIAL RULE.—No local educational agency shall be required to provide services under this part through a particular instructional method or in a particular instructional setting in order to demonstrate such agency's compliance with paragraph (1).

"(c) COMPARABILITY OF SERVICES.—

"(1) IN GENERAL.—(A) Except as provided in paragraphs (4) and (5), a local educational agency may receive funds under this part only if State and local funds will be used in schools served under this part to provide services that, taken as a whole, are at least comparable to services in schools that are not receiving funds under this part.

"(B) If the local educational agency is serving all of such agency's schools under this part, such agency may receive funds

under this part only if such agency will use State and local funds to provide services that, taken as a whole, are substantially comparable in each school.

"(C) A local educational agency may meet the requirements of subparagraphs (A) and (B) on a grade-span by grade-span basis or a school-by-school basis.

"(2) WRITTEN ASSURANCE.—(A) A local educational agency shall be considered to have met the requirements of paragraph (1) if such agency has filed with the State educational agency a written assurance that such agency has established and implemented—

"(i) a local educational agency-wide salary schedule;

"(ii) a policy to ensure equivalence among schools in teachers, administrators, and other staff; and

"(iii) a policy to ensure equivalence among schools in the provision of curriculum materials and instructional supplies.

"(B) For the purpose of subparagraph (A), in the determination of expenditures per pupil from State and local funds, or instructional salaries per pupil from State and local funds, staff salary differentials for years of employment shall not be included in such determinations.

"(C) A local educational agency need not include unpredictable changes in student enrollment or personnel assignments that occur after the beginning of a school year in determining comparability of services under this subsection.

"(3) PROCEDURES AND RECORDS.—Each local educational agency assisted under this part shall—

"(A) develop procedures for compliance with this subsection; and

"(B) maintain records that are updated biennially documenting such agency's compliance with this subsection.

"(4) INAPPLICABILITY.—This subsection shall not apply to a local educational agency that does not have more than one building for each grade span.

"(5) COMPLIANCE.—For the purpose of determining compliance with paragraph (1), a local educational agency may exclude State and local funds expended for—

"(A) bilingual education for children of limited English proficiency; and

"(B) excess costs of providing services to children with disabilities as determined by the local educational agency.

20 USC 6323

"SEC. 1120B. COORDINATION REQUIREMENTS.

"(a) IN GENERAL.—Each local educational agency receiving assistance under this part shall carry out the activities described in subsection (b) to the extent feasible and appropriate to the circumstances, including the extent to which such local educational agency is able to secure the cooperation of parents and local Head Start agencies and, if feasible, other early childhood development programs.

"(b) ACTIVITIES.—The activities referred to in subsection (a) are activities that increase coordination between the local educational agency and a Head Start agency, and, if feasible, other early childhood development programs, serving children who will attend the schools of such agency, including—

"(1) developing and implementing a systematic procedure for receiving records regarding such children transferred with parental consent from a Head Start program or, where applicable, other early childhood development programs;

"(2) establishing channels of communication between school staff and their counterparts in such Head Start agencies (including teachers, social workers, and health staff) or other early childhood development programs, as appropriate, to facilitate coordination of programs;

"(3) conducting meetings involving parents, kindergarten or elementary school teachers, and Head Start teachers or, if appropriate, teachers from other early childhood development programs, to discuss the developmental and other needs of individual children; and

"(4) organizing and participating in joint transition related training of school staff, Head Start staff, and, where appropriate, other early childhood staff.

"(c) COORDINATION OF REGULATIONS.—The Secretary shall work with the Secretary of Health and Human Services to coordinate regulations promulgated under this part with regulations promulgated under the Head Start Act Amendments of 1994.

"Subpart 2—Allocations

"SEC. 1121. GRANTS FOR THE OUTLYING AREAS AND THE SECRETARY OF THE INTERIOR. 20 USC 6331.

"(a) RESERVATION OF FUNDS.—From the amount appropriated for payments to States for any fiscal year under section 1002(a), the Secretary shall reserve a total of 1 percent to provide assistance to—

"(1) the outlying areas on the basis of their respective need for such assistance according to such criteria as the Secretary determines will best carry out the purpose of this part; and

"(2) the Secretary of the Interior in the amount necessary to make payments pursuant to subsection (c). Territories

"(b) ASSISTANCE TO THE OUTLYING AREAS.—

"(1) IN GENERAL.—From amounts made available under subsection (a) in each fiscal year the Secretary shall make grants to local educational agencies in the outlying areas (other than the outlying areas assisted under paragraph (3)).

"(2) COMPETITIVE GRANTS.—(A) The Secretary shall reserve \$5,000,000 from the amounts made available under subsection (a) in each fiscal year to award grants on a competitive basis, to local educational agencies in the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. The Secretary shall award such grants according to the recommendations of the Pacific Region Educational Laboratory which shall conduct a competition for such grants.

"(B) Except as provided in subparagraph (D), grant funds awarded under this part only may be used for programs described in this Act, including teacher training, curriculum development, instructional materials, or general school improvement and reform.

"(C) Grant funds awarded under this paragraph only may be used to provide direct educational services.

"(D) The Secretary may provide 5 percent of the amount made available for grants under this paragraph to pay the administrative costs of the Pacific Region Educational Laboratory regarding activities assisted under this paragraph.

"(c) ALLOTMENT TO THE SECRETARY OF THE INTERIOR.—

"(1) IN GENERAL.—The amount allotted for payments to the Secretary of the Interior under subsection (a)(2) for any fiscal year shall be, as determined pursuant to criteria established by the Secretary, the amount necessary to meet the special educational needs of—

"(A) Indian children on reservations served by elementary and secondary schools for Indian children operated or supported by the Department of the Interior; and

"(B) out-of-State Indian children in elementary and secondary schools in local educational agencies under special contracts with the Department of the Interior.

"(2) PAYMENTS.—From the amount allotted for payments to the Secretary of the Interior under subsection (a)(2), the Secretary of the Interior shall make payments to local educational agencies, upon such terms as the Secretary determines will best carry out the purposes of this part, with respect to out-of-State Indian children described in paragraph (1). The amount of such payment may not exceed, for each such child, the greater of—

"(A) 40 percent of the average per pupil expenditure in the State in which the agency is located; or

"(B) 48 percent of such expenditure in the United States.

20 USC 6332

"SEC. 1122. ALLOCATIONS TO STATES.

"(a) IN GENERAL.—

"(1) FISCAL YEAR 1995.—For fiscal year 1995, appropriations for this part shall be allocated according to the provisions of sections 1005, except subsection (a)(3), and 1006, part A of chapter 1 of title I, Elementary and Secondary Education Act of 1965, as in effect on September 30, 1994, except that the State minimum for section 1005 shall be the lesser of 0.25 percent of total appropriations or the average of 0.25 percent of total appropriations and 150 percent of the national average grant per child counted for grants under section 1005 multiplied by the State's number of children counted for such grants, and for grants under section 1006, the State minimum shall be the lesser of—

"(A) 0.25 percent of total appropriations; and

"(B) the average of—

"(i) 0.25 percent of total appropriations; and

"(ii) the greater of 150 percent of the national average grant per child counted for grants under such section 1006 multiplied by the State total number of such children, or \$340,000.

"(2) SUCCEEDING FISCAL YEARS.—For fiscal years 1996 through 1999, an amount of the appropriations for this part equal to the appropriation for fiscal year 1995 for section 1005, shall be allocated in accordance with section 1124, and an amount equal to the appropriation for fiscal year 1995 for section 1006 shall be allocated in accordance with section 1124A. Any additional appropriations under section 1002(a)

for any fiscal year, after application of the preceding sentence, shall be allocated in accordance with section 1125.

"(b) ADJUSTMENTS WHERE NECESSITATED BY APPROPRIATIONS.—

"(1) IN GENERAL.—If the sums available under this part for any fiscal year are insufficient to pay the full amounts that all local educational agencies in States are eligible to receive under sections 1124, 1124A, and 1125 for such year, the Secretary shall ratably reduce the allocations to such local educational agencies, subject to subsections (c) and (d) of this section.

"(2) ADDITIONAL FUNDS.—If additional funds become available for making payments under sections 1124, 1124A, and 1125 for such fiscal year, allocations that were reduced under paragraph (1) shall be increased on the same basis as they were reduced.

"(c) HOLD-HARMLESS AMOUNTS.—

"(1) IN GENERAL.—For fiscal year 1995, notwithstanding subsection (b) and without regard to amounts available for delinquent children under subpart 2 of part D, the amount made available to each local educational agency under such section 1005 shall be at least 85 percent of the amount such local educational agency received for the preceding year under such section 1005.

"(2) FISCAL YEAR 1996.—Notwithstanding subsection (b) and without regard to amounts available for delinquent children under subpart 2 of part D, for fiscal year 1996 the total amount made available to each local educational agency under each of sections 1124 and 1124A for any fiscal year shall be at least 100 percent of the total amount such local educational agency was allocated under such sections (or their predecessor authorities) for the preceding fiscal year.

"(3) FISCAL YEARS 1997-1999.—For fiscal years 1997 through 1999, notwithstanding subsection (b) and without regard to amounts available for delinquent children under subpart 2 of part D, the amount made available to each local educational agency under each of sections 1124 and 1125 shall be at least 95 percent of the previous year's amount if the number of children counted for grants under section 1124 is at least 30 percent of the total number of children aged 5 to 17 years, inclusive, in the local educational agency, 90 percent of the previous year amount if this percentage is between 15 percent and 30 percent, and 85 percent if this percentage is below 15 percent. For fiscal years 1997 and 1998, in calculating grants on the basis of population data for counties, the Secretary shall apply the hold-harmless percentages in the preceding sentence to counties. For fiscal years 1996 through 1998, if the Secretary's allocation for a county is not sufficient to meet the hold-harmless requirements of this paragraph for every local educational agency within that county, then the State educational agency shall reallocate funds proportionately from all other local educational agencies in the State that are receiving funds in excess of the hold-harmless amounts specified in this paragraph.

"(d) RATABLE REDUCTIONS.—

"(1) IN GENERAL.—If the sums made available under this part for any fiscal year are insufficient to pay the full amounts that all States are eligible to receive under subsection (c) for

such year, the Secretary shall ratably reduce such amounts for such year.

"(2) ADDITIONAL FUNDS.—If additional funds become available for making payments under subsection (c) for such fiscal year, amounts that were reduced under paragraph (1) shall be increased on the same basis as such amounts reduced.

"(e) DEFINITION.—For the purpose of this section and sections 1124 and 1125, the term State means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

20 USC 6333

"SEC. 1124. BASIC GRANTS TO LOCAL EDUCATIONAL AGENCIES.

"(a) AMOUNT OF GRANTS.—

"(1) GRANTS FOR LOCAL EDUCATIONAL AGENCIES AND PUERTO RICO.—The grant which a local educational agency in a State is eligible to receive under this subpart for a fiscal year shall (except as provided in section 1126), be determined by multiplying the number of children counted under subsection (c) by 40 percent of the amount determined under the next sentence. The amount determined under this sentence shall be the average per pupil expenditure in the State except that—

"(A) if the average per pupil expenditure in the State is less than 80 percent of the average per pupil expenditure in the United States, such amount shall be 80 percent of the average per pupil expenditure in the United States; or

"(B) if the average per pupil expenditure in the State is more than 120 percent of the average per pupil expenditure in the United States, such amount shall be 120 percent of the average per pupil expenditure in the United States.

"(2) BASIS FOR CALCULATING GRANTS.—For fiscal years 1995 through 1998, grants shall be calculated by the Secretary on the basis of the number of children counted under subsection (c) for counties, and State educational agencies shall suballocate county amounts to local educational agencies, in accordance with regulations published by the Secretary. In any State in which a large number of local educational agencies overlap county boundaries, the State educational agency may apply to the Secretary for authority during any particular fiscal year to make the allocations under this part (other than section 1124A) directly to local educational agencies without regard to the counties. If the Secretary approves an application of a State educational agency for a particular year under this subparagraph, the State educational agency shall provide assurances that—

"(A) such allocations will be made using precisely the same factors for determining a grant as are used under this part;

"(B) such allocations will be made using alternative data approved by the Secretary that the State determines best reflects the distribution of children in poor families and is adjusted to be equivalent in proportion to the number of children determined in accordance with subsection (c); or

"(C) such allocations will be made using data that the State educational agency submits to the Secretary for approval that more accurately target poverty.

In addition, the State educational agency shall provide assurances that a procedure will be established through which local educational agencies dissatisfied with the determinations made by the State educational agency may appeal directly to the Secretary for a final determination. Beginning in fiscal year 1999, grants shall be calculated by the Secretary on the basis of population data compiled for local educational agencies, unless the Secretary and the Secretary of Commerce determine that use of the updated population data would be inappropriate or unreliable taking into consideration the recommendations of the study to be conducted by the National Academy of Sciences. If the Secretary and the Secretary of Commerce determine that some or all of the data referred to in this paragraph are inappropriate or unreliable, the Secretaries shall jointly issue a report setting forth their reasons in detail. In years when grants are calculated by the Secretary on the basis of local educational agency data, for each local educational agency serving an area with a total population of at least 20,000 persons, the grant under this section shall be the amount determined by the Secretary. For local educational agencies serving areas with total populations of fewer than 20,000 persons, the State educational agency may either—

"(i) distribute to such local educational agencies grants under this section equal to the amounts determined by the Secretary; and

"(ii) use an alternative method, approved by the Secretary, to distribute the share of the State's total grants under this section that is based on local educational agencies with total populations of fewer than 20,000 persons. Such an alternative method of distributing grants under this section among a State's local educational agencies serving areas with total populations of fewer than 20,000 persons shall be based upon population data that the State educational agency determines best reflect the current distribution of children in poor families among the State's local educational agencies serving areas with total populations of fewer than 20,000 persons. If a local educational agency serving an area with total population of less than 20,000 persons is dissatisfied with the determination of its grant by the State education agency, then such local educational agency may appeal this determination to the Secretary. The Secretary must respond to this appeal within 45 days of receipt.

"(3) PUERTO RICO.—For each fiscal year, the Secretary shall determine the percentage which the average per pupil expenditure in the Commonwealth of Puerto Rico is of the lowest average per pupil expenditure of any of the 50 States. The grant which the Commonwealth of Puerto Rico shall be eligible to receive under this section for a fiscal year shall be the amount arrived at by multiplying the number of children counted under subsection (c) for the Commonwealth of Puerto Rico by the product of—

"(A) the percentage determined under the preceding sentence; and

"(B) 32 percent of the average per pupil expenditure in the United States.

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"(4) DEFINITION.—For purposes of this subsection, the term 'State' does not include Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and Palau.

"(b) MINIMUM NUMBER OF CHILDREN TO QUALIFY.—Subject to the succeeding sentence, a local educational agency shall be eligible for a basic grant for a fiscal year under this subpart only if the number of children counted under subsection (c) in the school district of such local educational agency is at least 10. Beginning in fiscal year 1996, no local educational agency shall be eligible for a grant under this section if the number of children counted for grants under this section is equal to 2 percent or less of the total school age population in the local educational agency. For fiscal years 1996 through 1998, grants not made as a result of applying the preceding sentence shall be reallocated by the State educational agency to other eligible local educational agencies in the State in proportion to the distribution of other funds under this section.

"(c) CHILDREN TO BE COUNTED.—

"(1) CATEGORIES OF CHILDREN.—The number of children to be counted for purposes of this section is the aggregate of—

"(A) the number of children aged 5 to 17, inclusive, in the school district of the local educational agency from families below the poverty level as determined under paragraph (2);

"(B) the number of children aged 5 to 17, inclusive, in the school district of such agency from families above the poverty level as determined under paragraph (5); and

"(C) the number of children aged 5 to 17, inclusive, in the school district of such agency in institutions for neglected and delinquent children (other than such institutions operated by the United States), but not counted pursuant to subpart 1 of part D for the purposes of a grant to a State agency, or being supported in foster homes with public funds.

"(2) DETERMINATION OF NUMBER OF CHILDREN.—For the purposes of this section, the Secretary shall determine the number of children aged 5 to 17, inclusive, from families below the poverty level on the basis of the most recent satisfactory data, described in paragraph (3), available from the Department of Commerce. For fiscal year 1999 and beyond, the District of Columbia and the Commonwealth of Puerto Rico shall be treated as individual local educational agencies. If a local educational agency contains two or more counties in their entirety, then each county will be treated as if such county were a separate local educational agency for purposes of calculating grants under this part. The total of grants for such counties shall be allocated to such a local educational agency, which local educational agency shall distribute to schools in each county within such agency a share of the local educational agency's total grant that is no less than the county's share of the population counts used to calculate the local educational agency's grant.

"(3) POPULATION UPDATES.—In fiscal year 1997 and every 2 years thereafter, the Secretary shall use updated data on the number of children, aged 5 to 17, inclusive, from families below the poverty level for counties or local educational agen-

cies, published by the Department of Commerce, unless the Secretary and the Secretary of Commerce determine that use of the updated population data would be inappropriate or unreliable, taking into consideration the recommendations of the study to be conducted by the National Academy of Sciences. If the Secretary and the Secretary of Commerce determine that some or all of the data referred to in this paragraph are inappropriate or unreliable, they shall jointly issue a report setting forth their reasons in detail. In determining the families which are below the poverty level, the Secretary shall utilize the criteria of poverty used by the Bureau of the Census in compiling the most recent decennial census, in such form as those criteria have been updated by increases in the Consumer Price Index for all urban consumers, published by the Bureau of Labor Statistics.

"(4) STUDY.—(A) The Secretary of Education shall, within 30 days after the date of enactment of the Improving America's Schools Act of 1994, contract with the National Academy of Sciences (hereafter in this section referred to as the 'Academy') to study the program to produce intercensal poverty data for small geographic areas and certain age cohorts being developed by the Bureau of the Census.

"(B) In conducting its study, the Academy shall consider such matters as—

"(i) the methodology used to produce and publish intercensal poverty data, and possible alternative methods to improve the usefulness of the data for Federal program purposes;

"(ii) the availability of alternative indicators of poverty for small geographic areas, against which the poverty data produced and published by the Bureau of the Census could be compared;

"(iii) the reliability of the poverty data produced and published by the Bureau of the Census, particularly for less populous geographic areas;

"(iv) the reliability of intercensal poverty data produced and published by the Bureau of the Census, as compared over time to similar data produced by the Bureau of the Census during the most recent decennial census; and

"(v) the usefulness of poverty data produced and published by the Bureau of the Census for Federal programs that allocate funds to State and sub-State areas based, in whole or in part, on such data.

"(C) The Academy shall submit to the Secretary and the Secretary of Commerce, as well as to the Committee on Education and Labor and the Committee on Post Office and Civil Service of the House of Representatives and the Committee on Labor and Human Resources and the Committee on Governmental Affairs of the Senate—

"(i) not later than 18 months after the date on which a contract is entered into under subsection (a), and not later than every 18 months thereafter, such interim reports on the Academy's activities under this Act that the Academy deems appropriate, including a detailed statement of the Academy's findings and conclusions with respect to any poverty data which the Bureau of the Census pub-

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lishes and produces, within 90 days of such publication; and

"(ii) not later than December 31, 1998, a final report which shall include a more detailed statement of the Academy's findings and conclusions with respect to the use of any intercensal poverty data produced and published by the Bureau of the Census as the basis for allocating Federal funds under this Act.

"(D) Of the funds appropriated under section 1002(f) of this Act, the Secretary shall use such sums as are necessary in each of fiscal years 1995, 1996, 1997, 1998, and 1999 to carry out the provisions of this paragraph.

"(5) OTHER CHILDREN TO BE COUNTED.—For purposes of this section, the Secretary shall determine the number of children aged 5 to 17, inclusive, from families above the poverty level on the basis of the number of such children from families receiving an annual income, in excess of the current criteria of poverty, from payments under the program of aid to families with dependent children under a State plan approved under title IV of the Social Security Act; and in making such determinations the Secretary shall utilize the criteria of poverty used by the Bureau of the Census in compiling the most recent decennial census for a family of 4 in such form as those criteria have been updated by increases in the Consumer Price Index for all urban consumers, published by the Bureau of Labor Statistics. The Secretary shall determine the number of such children and the number of children of such ages living in institutions for neglected or delinquent children, or being supported in foster homes with public funds, on the basis of the caseload data for the month of October of the preceding fiscal year (using, in the case of children described in the preceding sentence, the criteria of poverty and the form of such criteria required by such sentence which were determined for the calendar year preceding such month of October) or, to the extent that such data are not available to the Secretary before January of the calendar year in which the Secretary's determination is made, then on the basis of the most recent reliable data available to the Secretary at the time of such determination. The Secretary of Health and Human Services shall collect and transmit the information required by this subparagraph to the Secretary not later than January 1 of each year.

"(6) ESTIMATE.—When requested by the Secretary, the Secretary of Commerce shall make a special updated estimate of the number of children of such ages who are from families below the poverty level (as determined under subparagraph (A) of this paragraph) in each school district, and the Secretary is authorized to pay (either in advance or by way of reimbursement) the Secretary of Commerce the cost of making this special estimate. The Secretary of Commerce shall give consideration to any request of the chief executive of a State for the collection of additional census information. For purposes of this section, the Secretary shall consider all children who are in correctional institutions to be living in institutions for delinquent children.

"(d) STATE MINIMUM.—Notwithstanding subsection (b)(1) or (d) of section 1122, the aggregate amount allotted for all local educational agencies within a State may not be less than the lesser of—

"(1) 0.25 percent of total grants under this section; or
"(2) the average of—

"(A) one-quarter of 1 percent of the total amount available for such fiscal year under this section; and

"(B) the number of children in such State counted under subsection (c) in the fiscal year multiplied by 150 percent of the national average per pupil payment made with funds available under this section for that year.

"SEC. 1124A. CONCENTRATION GRANTS TO LOCAL EDUCATIONAL AGENCIES. 20 USC 6334

"(a) ELIGIBILITY FOR AND AMOUNT OF GRANTS.—

"(1) IN GENERAL.—(A) Except as otherwise provided in this paragraph, each local educational agency, in a State other than Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and Palau, which is eligible for a grant under this part for any fiscal year shall be eligible for an additional grant under this section for that fiscal year if—

"(i) the number of children counted under section 1124(c) in the county (for fiscal years 1996 through 1998), or local educational agency (for fiscal years beginning with 1999) for the fiscal year exceeds 6,500; or

"(ii) the number of children counted under section 1124(c) exceeds 15 percent of the total number of children aged 5 to 17, inclusive, in the county (for fiscal years 1996 through 1998), or local educational agency (for fiscal years beginning with 1999) in that fiscal year.

"(B) Notwithstanding such subsections (b)(1) and (d) of section 1122, no State described in subparagraph (A) shall receive less than the lesser of—

"(i) 0.25 percent of total grants; or

"(ii) the average of—

"(I) one-quarter of 1 percent of the sums available to carry out this section for such fiscal year; and

"(II) the greater of—

"(aa) \$340,000; or

"(bb) the number of children in such State counted for purposes of this section in that fiscal year multiplied by 150 percent of the national average per pupil payment made with funds available under this section for that year.

"(2) SPECIAL RULE.—For each county or local educational agency eligible to receive an additional grant under this section for any fiscal year the Secretary shall determine the product of—

"(A) the number of children counted under section 1124(c) for that fiscal year; and

"(B) the quotient resulting from the division of the amount determined for those agencies under section 1124(a)(1) for the fiscal year for which the determination is being made divided by the total number of children counted under section 1124(c) for that agency for fiscal year.

"(3) AMOUNT.—The amount of the additional grant for which an eligible local educational agency or county is eligible under this section for any fiscal year shall be an amount

which bears the same ratio to the amount available to carry out this section for that fiscal year as the product determined under paragraph (2) for such local educational agency for that fiscal year bears to the sum of such products for all local educational agencies in the United States for that fiscal year.

"(4) SUBALLOCATION.—For fiscal years 1996 through 1998, county amounts shall be suballocated to local educational agencies meeting the criteria of paragraph (1)(A) by State educational agencies, in accordance with regulations published by the Secretary. For fiscal years 1995 through 1998, grants shall be calculated by the Secretary on the basis of the number of children counted under section 1124(c) for counties, and State educational agencies shall suballocate county amounts to local educational agencies, in accordance with regulations published by the Secretary. In any State in which a large number of local educational agencies overlap county boundaries, the State educational agency may apply to the Secretary for authority during any particular fiscal year to make the allocations under this part (other than this section) directly to local educational agencies without regard to the counties. If the Secretary approves an application of a State educational agency for a particular year under this paragraph, the State educational agency shall provide assurances that—

"(A) such allocations will be made using precisely the same factors for determining a grant as are used under this part;

"(B) such allocations will be made using alternative data approved by the Secretary that the State determines best reflects the distribution of children in poor families and is adjusted to be equivalent in proportion to the number of children determined in accordance with section 1124(c); or

"(C) such allocations will be made using data that the State educational agency submits to the Secretary for approval that more accurately target poverty.

In addition, the State educational agency shall provide assurances that a procedure will be established through which local educational agencies dissatisfied with the determinations made by the State educational agency may appeal directly to the Secretary for a final determination. A State may reserve not more than 2 percent of its allocations in fiscal years 1996 through 1998 under this section for the purpose of making grants to local educational agencies that meet the criteria of clause (i) or (ii) of paragraph (1)(A), but are in ineligible counties. For fiscal years beginning with 1999, for each local educational agency serving an area with a total population of at least 20,000 persons, the grant under this section shall be the amount determined by the Secretary. For local educational agencies serving areas with total populations of fewer than 20,000 persons, the State educational agency may either (i) distribute to such local educational agencies grants under this section equal to the amounts determined by the Secretary; or (ii) use an alternative method, approved by the Secretary, to distribute the share of the State's total grants under this section that is based on local educational agencies with total populations of fewer than 20,000 persons. Such an alternative method of distributing grants under this section among a State's

local educational agencies serving areas with total populations of fewer than 20,000 persons shall be based upon population data that the State educational agency determines best reflects the current distribution of children in poor families among the State's local educational agencies serving areas with total populations of fewer than 20,000 persons and meeting the eligibility criteria of paragraph (1)(A). If a local educational agency serving an area with total population of less than 20,000 persons is dissatisfied with the determination of its grant by the State educational agency, then such local educational agency may appeal this determination to the Secretary. The Secretary shall respond to this appeal within 45 days of receipt. The Secretary shall consult with the Secretary of Commerce regarding whether available data on population for local educational agencies serving areas with total populations of fewer than 20,000 persons are sufficiently reliable to be used to determine final grants to such areas meeting the eligibility criteria of paragraph (1)(A).

"(b) RESERVATION OF FUNDS.—Of the total amount of funds available for this section and sections 1124 and 1125, an amount equal to the appropriation for fiscal year 1995 for section 1006 of this Act (as such section was in effect on the day preceding the date of enactment of this Act) shall be available to carry out this section.

"(c) RATABLE REDUCTION RULE.—If the sums available under subsection (b) for any fiscal year for making payments under this section are not sufficient to pay in full the total amounts which all States are eligible to receive under subsection (a) for such fiscal year, the maximum amounts which all States are eligible to receive under subsection (a) for such fiscal year shall be ratably reduced. In the case that additional funds become available for making such payments for any fiscal year during which the preceding sentence is applicable, such reduced amounts shall be increased on the same basis as they were reduced.

"(d) STATES RECEIVING MINIMUM GRANTS.—In States that receive the minimum grant under subsection (a)(1)(B), the State educational agency shall allocate such funds among the local educational agencies in each State either—

"(1) in accordance with paragraphs (2) and (4) of subsection (a); or

"(2) based on their respective concentrations and numbers of children counted under section 1124(c), except that only those local educational agencies with concentrations or numbers of children counted under section 1124(c) that exceed the statewide average percentage of such children or the statewide average number of such children shall receive any funds on the basis of this paragraph.

"SEC. 1125. TARGETED GRANTS TO LOCAL EDUCATIONAL AGENCIES. 20 USC 6335

"(a) ELIGIBILITY OF LOCAL EDUCATIONAL AGENCIES.—A local educational agency in a State is eligible to receive a targeted grant under this section for any fiscal year if the number of children in the local educational agency counted under subsection 1124(c), before application of the weighting factor described in subsection (c), is at least 10, and if the number of children counted for grants under section 1124 is at least 5 percent of the total population aged 5 to 17 years, inclusive, in the local educational agency.

Funds made available as a result of applying this subsection shall be reallocated by the State educational agency to other eligible local educational agencies in the State in proportion to the distribution of other funds under this section.

"(b) GRANTS FOR LOCAL EDUCATIONAL AGENCIES, THE DISTRICT OF COLUMBIA, AND PUERTO RICO.—

"(1) IN GENERAL.—The amount of the grant that a local educational agency in a State or that the District of Columbia is eligible to receive under this section for any fiscal year shall be the product of—

"(A) the weighted child count determined under subsection (c); and

"(B) the amount in the second sentence of subparagraph 1124(a)(1)(A).

"(2) PUERTO RICO.—For each fiscal year, the amount of the grant for which the Commonwealth of Puerto Rico is eligible under this section shall be equal to the number of children counted under subsection (c) for Puerto Rico, multiplied by the amount determined in subparagraph 1124(a)(3).

"(c) WEIGHTED CHILD COUNT.—

"(1) FISCAL YEARS 1999.—

"(A) IN GENERAL.—The weighted child count used to determine a county's allocation under this section is the larger of the two amounts determined under clause (i) or (ii), as follows:

"(i) BY PERCENTAGE OF CHILDREN.—This amount is determined by adding—

"(I) the number of children determined under section 1124(c) for that county constituting up to 12.20 percent, inclusive, of the county's total population aged 5 to 17, inclusive, multiplied by 1.0;

"(II) the number of such children constituting more than 12.20 percent, but not more than 17.70 percent, of such population, multiplied by 1.75;

"(III) the number of such children constituting more than 17.70 percent, but not more than 22.80 percent, of such population, multiplied by 2.5;

"(IV) the number of such children constituting more than 22.80 percent, but not more than 29.70 percent, of such population, multiplied by 3.25; and

"(V) the number of such children constituting more than 29.70 percent of such population, multiplied by 4.0.

"(ii) BY NUMBER OF CHILDREN.—This amount is determined by adding—

"(I) the number of children determined under section 1124(c) constituting up to 1,917, inclusive, of the county's total population aged 5 to 17, inclusive, multiplied by 1.0;

"(II) the number of such children between 1,918 and 5,938, inclusive, in such population, multiplied by 1.5;

"(III) the number of such children between 5,939 and 20,199, inclusive, in such population, multiplied by 2.0;

"(IV) the number of such children between 20,200 and 77,999, inclusive, in such population, multiplied by 2.5; and

"(V) the number of such children in excess of 77,999 in such population, multiplied by 3.0.

"(B) PUERTO RICO.—Notwithstanding subparagraph (A), the weighting factor for Puerto Rico under this paragraph shall not be greater than the total number of children counted under subsection 1124(c) multiplied by 1.72.

"(2) FISCAL YEARS AFTER 1999.—

"(A) IN GENERAL.—For each fiscal year beginning with fiscal year 1999 for which the Secretary uses local educational agency data, the weighted child count used to determine a local educational agency's grant under this section is the larger of the two amounts determined under clauses (i) and (ii), as follows:

"(i) BY PERCENTAGE OF CHILDREN.—This amount is determined by adding—

"(I) the number of children determined under section 1124(c) for that local educational agency constituting up to 14.265 percent, inclusive, of the agency's total population aged 5 to 17, inclusive, multiplied by 1.0;

"(II) the number of such children constituting more than 14.265 percent, but not more than 21.553 percent, of such population, multiplied by 1.75;

"(III) the number of such children constituting more than 21.553 percent, but not more than 29.223 percent, of such population, multiplied by 2.5;

"(IV) the number of such children constituting more than 29.223 percent, but not more than 36.538 percent, of such population, multiplied by 3.25; and

"(V) the number of such children constituting more than 36.538 percent of such population, multiplied by 4.0.

"(ii) BY NUMBER OF CHILDREN.—This amount is determined by adding—

"(I) the number of children determined under section 1124(c) constituting up to 575, inclusive, of the agency's total population aged 5 to 17, inclusive, multiplied by 1.0;

"(II) the number of such children between 576 and 1,870, inclusive, in such population, multiplied by 1.5;

"(III) the number of such children between 1,871 and 6,910, inclusive, in such population, multiplied by 2.0;

"(IV) the number of such children between 6,911 and 42,000, inclusive, in such population, multiplied by 2.5; and

"(V) the number of such children in excess of 42,000 in such population, multiplied by 3.0.

"(B) PUERTO RICO.—Notwithstanding subparagraph (A), the weighting factor for Puerto Rico under this para-

graph shall not be greater than the total number of children counted under section 1124(c) multiplied by 1.72.

"(d) **LOCAL EDUCATIONAL AGENCY ALLOCATIONS.**—For fiscal years 1995 through 1998, grants shall be calculated by the Secretary on the basis of the number of children counted under section 1124 for counties, and State educational agencies shall suballocate county amounts to local educational agencies, in accordance with regulations published by the Secretary. In any State in which a large number of local educational agencies overlap county boundaries, the State educational agency may apply to the Secretary for authority during any particular fiscal year to make the allocations under this part (other than section 1124A) directly to local educational agencies without regard to the counties. If the Secretary approves an application of a State educational agency for a particular year under this subparagraph, the State educational agency shall provide assurances that—

- "(1) such allocations will be made using precisely the same factors for determining a grant as are used under this part;
- "(2) such allocations will be made using alternative data approved by the Secretary that the State determines best reflects the distribution of children in poor families and is adjusted to be equivalent in proportion to the number of children determined in accordance with section 1124(c); or
- "(3) such allocations will be made using data that the State educational agency submits to the Secretary for approval that more accurately target poverty.

In addition, the State educational agency shall provide assurances that a procedure will be established through which local educational agencies dissatisfied with the determinations made by the State educational agency may appeal directly to the Secretary for a final determination. For fiscal years beginning in 1999, for each local educational agency serving an area with a total population of at least 20,000 persons, the grant under this section shall be the amount determined by the Secretary. For local educational agencies serving areas with total populations of fewer than 20,000 persons, the State educational agency may either (1) distribute to such local educational agencies grants under this section equal to the amounts determined by the Secretary; or (2) use an alternative method, approved by the Secretary, to distribute the share of the State's total grants under this section that is based on local educational agencies with total populations of fewer than 20,000 persons. Such an alternative method of distributing grants under this section among a State's local educational agencies serving areas with total populations of fewer than 20,000 persons shall be based upon population data that the State educational agency determines best reflects the current distribution of children in poor families among the State's local educational agencies serving areas with total populations of fewer than 20,000 persons. If a local educational agency serving an area with total populations of less than 20,000 persons is dissatisfied with the determination of its grant by the State educational agency, then the local educational agency may appeal this determination to the Secretary. The Secretary shall respond to this appeal within 45 days of receipt.

"(e) **STATE MINIMUM.**—Notwithstanding any other provision of this section or subsection (b)(1) or (d) of section 1122, from the total amount available for any fiscal year to carry out this section, each State shall be allotted at least the lesser of—

- "(1) 0.25 percent of total appropriations; or
- "(2) the average of—

"(A) one-quarter of 1 percent of the total amount available to carry out this section; and

"(B) 150 percent of the national average grant under this section per child described in section 1124(c), without application of a weighting factor, multiplied by the State's total number of children described in section 1124(c), without application of a weighting factor.

"SEC. 1125A. EDUCATION FINANCE INCENTIVE PROGRAM.

20 USC 6336.

"(a) **GRANTS.**—The Secretary is authorized to make grants to States from the sums appropriated pursuant to subsection (e) to carry out the purposes of this part.

"(b) **DISTRIBUTION BASED UPON FISCAL EFFORT AND EQUITY.**—

"(1) **IN GENERAL.**—Funds appropriated pursuant to subsection (e) shall be allotted to each State based upon the number of children aged 5 to 17, inclusive, of such State multiplied by the product of—

"(A) such State's effort factor described in paragraph (2); multiplied by

"(B) 1.30 minus such State's equity factor described in paragraph (3), except that for each fiscal year no State shall receive less than one-quarter of 1 percent of the total amount appropriated pursuant to subsection (e) for such fiscal year.

"(2) **EFFORT FACTOR.**—(A) Except as provided in subparagraph (B), the effort factor for a State shall be determined in accordance with the succeeding sentence, except that such factor shall not be less than .95 nor greater than 1.05. The effort factor determined under this sentence shall be a fraction the numerator of which is the product of the three-year average per-pupil expenditure in the State multiplied by the three-year average per capita income in the United States and the denominator of which is the product of the three-year average per capita income in such State multiplied by the three-year average per-pupil expenditure in the United States.

"(B) The effort factor for the Commonwealth of Puerto Rico shall be equal to the lowest effort factor calculated under subparagraph (A) for any State.

"(3) **EQUITY FACTOR.**—(A)(i) Except as provided in subparagraph (B), the Secretary shall determine the equity factor under this section for each State in accordance with clause (ii).

"(ii)(I) For each State, the Secretary shall compute a weighted coefficient of variation for the per-pupil expenditures of local educational agencies in accordance with subclauses (II), (III), (IV), and (V).

"(II) In computing coefficients of variation, the Secretary shall weigh the variation between per-pupil expenditures in each local educational agency and the average per-pupil expenditures in the State according to the number of pupils in the local educational agency.

"(III) In determining the number of pupils under this paragraph in each local educational agency and each State, the Secretary shall multiply the number of children from low-income families by 1.4 under this paragraph.

"(IV) In computing coefficients of variation, the Secretary shall include only those local educational agencies with an enrollment of more than 200 students.

"(V) The Secretary shall compute separate coefficients of variation for elementary, secondary, and unified local educational agencies and shall combine such coefficients into a single weighted average coefficient for the State by multiplying each coefficient by the total enrollments of the local educational agencies in each group, adding such products, and dividing such sum by the total enrollments of the local educational agencies in the State.

"(B) The equity factor for a State that meets the disparity standard described in section 222.63 of title 34, Code of Federal Regulations (as such section was in effect on the day preceding the date of enactment of this Act) or a State with only one local educational agency shall be not greater than .10.

"(C) The Secretary may revise each State's equity factor as necessary based on the advice of independent education finance scholars to reflect other need-based costs of local educational agencies in addition to low-income student enrollment, such as differing geographic costs, costs associated with students with disabilities, children with limited-English proficiency or other meaningful educational needs, which deserve additional support. In addition and also with the advice of independent education finance scholars, the Secretary may revise each State's equity factor to incorporate other valid and accepted methods to achieve adequacy of educational opportunity that may not be reflected in a coefficient of variation method.

"(c) USE OF FUNDS.—All funds awarded to each State under this section shall be allocated to local educational agencies and schools on a basis consistent with the distribution of other funds to such agencies and schools under sections 1124, 1124A, and 1125 to carry out activities under this part.

"(d) MAINTENANCE OF EFFORT.—

"(1) IN GENERAL.—Except as provided in paragraph (2), a State is entitled to receive its full allotment of funds under this part for any fiscal year if the Secretary finds that either the combined fiscal effort per student or the aggregate expenditures within the State with respect to the provision of free public education for the fiscal year preceding the fiscal year for which the determination is made was not less than 90 percent of such combined fiscal effort or aggregate expenditures for the second fiscal year preceding the fiscal year for which the determination is made.

"(2) REDUCTION OF FUNDS.—The Secretary shall reduce the amount of the of funds awarded to any State under this section in any fiscal year in the exact proportion to which the State fails to meet the requirements of paragraph (1) by falling below 90 percent of both the fiscal effort per student and aggregate expenditures (using the measure most favorable to the State), and no such lesser amount shall be used for computing the effort required under paragraph (1) for subsequent years.

"(3) WAIVERS.—The Secretary may waive, for one fiscal year only, the requirements of this subsection if the Secretary determines that such a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster

or a precipitous and unforeseen decline in the financial resources of the State.

"(e) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of making grants under this section, there are authorized to be appropriated \$200,000,000 for fiscal year 1996 and such sums as may be necessary for each of the three succeeding fiscal years.

"SEC. 1126. SPECIAL ALLOCATION PROCEDURES.

20 USC 6337

"(a) ALLOCATIONS FOR NEGLECTED CHILDREN.—

"(1) IN GENERAL.—If a State educational agency determines that a local educational agency in the State is unable or unwilling to provide for the special educational needs of children who are living in institutions for neglected children as described in subparagraph 1124(c)(1)(C), the State educational agency shall, if such agency assumes responsibility for the special educational needs of such children, receive the portion of such local educational agency's allocation under sections 1124, 1124A, and 1125 that is attributable to such children.

"(2) SPECIAL RULE.—If the State educational agency does not assume such responsibility, any other State or local public agency that does assume such responsibility shall receive that portion of the local educational agency's allocation.

"(b) ALLOCATIONS AMONG LOCAL EDUCATIONAL AGENCIES.—The State educational agency may allocate the amounts of grants under sections 1124, 1124A, and 1125 among the affected local educational agencies—

"(1) if two or more local educational agencies serve, in whole or in part, the same geographical area;

"(2) if a local educational agency provides free public education for children who reside in the school district of another local educational agency; or

"(3) to reflect the merger, creation, or change of boundaries of one or more local educational agencies.

"(c) REALLOCATION.—If a State educational agency determines that the amount of a grant a local educational agency would receive under sections 1124, 1124A, and 1125 is more than such local agency will use, the State educational agency shall make the excess amount available to other local educational agencies in the State that need additional funds in accordance with criteria established by the State educational agency.

"SEC. 1127. CARRYOVER AND WAIVER.

20 USC 6338

"(a) LIMITATION ON CARRYOVER.—Notwithstanding section 421 of the General Education Provisions Act or any other provision of law, not more than 15 percent of the funds allocated to a local educational agency for any fiscal year under this subpart (but not including funds received through any reallocation under this subpart) may remain available for obligation by such agency for one additional fiscal year.

"(b) WAIVER.—A State educational agency may, once every three years, waive the percentage limitation in subsection (a) if—

"(1) the agency determines that the request of a local educational agency is reasonable and necessary; or

"(2) supplemental appropriations for this subpart become available.

"(c) EXCLUSION.—The percentage limitation under subsection (a) shall not apply to any local educational agency that receives less than \$50,000 under this subpart for any fiscal year.

Disadvantaged
persons.
Grants

20 USC 6361

"PART B—EVEN START FAMILY LITERACY PROGRAMS

"SEC. 1201. STATEMENT OF PURPOSE.

"It is the purpose of this part to help break the cycle of poverty and illiteracy by improving the educational opportunities of the Nation's low-income families by integrating early childhood education, adult literacy or adult basic education, and parenting education into a unified family literacy program, to be referred to as 'Even Start'. The program shall—

"(1) be implemented through cooperative projects that build on existing community resources to create a new range of services;

"(2) promote achievement of the National Education Goals; and

"(3) assist children and adults from low-income families to achieve to challenging State content standards and challenging State student performance standards.

20 USC 6362

"SEC. 1202. PROGRAM AUTHORIZED.

"(a) RESERVATION FOR MIGRANT PROGRAMS, OUTLYING AREAS, AND INDIAN TRIBES.—

"(1) IN GENERAL.—For each fiscal year, the Secretary shall reserve 5 percent of the amount appropriated under section 1002(b) for programs, under such terms and conditions as the Secretary shall establish, that are consistent with the purpose of this part, and according to their relative needs, for—

"(A) children of migratory workers;

"(B) the outlying areas; and

"(C) Indian tribes and tribal organizations.

"(2) SPECIAL RULE.—If the amount of funds made available under this subsection exceeds \$4,600,000, the Secretary shall award a grant, on a competitive basis, of sufficient size and for a period of sufficient duration to demonstrate the effectiveness of a family literacy program in a prison that houses women and their preschool age children and that has the capability of developing a program of high quality.

"(b) RESERVATION FOR FEDERAL ACTIVITIES.—From amounts appropriated under section 1002(b), the Secretary may reserve not more than three percent of such amounts or the amount reserved to carry out the activities described in paragraphs (1) and (2) of subsection (a) for the fiscal year 1994, whichever is greater, for purposes of—

"(1) carrying out the evaluation required by section 1209; and

"(2) providing, through grants or contracts with eligible organizations, technical assistance, program improvement, and replication activities.

"(c) RESERVATION FOR GRANTS.—

"(1) GRANTS AUTHORIZED.—In any fiscal year in which the amount appropriated to carry out this part exceeds the amount appropriated to carry out this part for the preceding fiscal year, the Secretary may reserve such funds in excess of the amount appropriated for such preceding fiscal years as do not exceed \$1,000,000 to award grants, on a competitive basis, to States to enable such States to plan and implement, statewide family literacy initiatives to coordinate and integrate exist-

ing Federal, State, and local literacy resources consistent with the purposes of this part. Such coordination and integration shall include funds available under the Adult Education Act, Head Start, Even Start, and the Family Support Act of 1988.

"(2) MATCHING REQUIREMENT.—The Secretary shall not make a grant to a State under paragraph (1) unless the State agrees that, with respect to the costs to be incurred by the eligible consortium in carrying out the activities for which the grant was awarded, the State will make available non-Federal contributions in an amount equal to not less than the Federal funds provided under the grant.

"(d) STATE ALLOCATION.—

"(1) IN GENERAL.—From amounts appropriated under section 1002(b) and not reserved under subsections (a), (b), and (c), the Secretary shall make grants to States from allocations under paragraph (2).

"(2) ALLOCATIONS.—Except as provided in paragraph (3), from the total amount available for allocation to States in any fiscal year, each State shall be eligible to receive a grant under paragraph (1) in an amount that bears the same ratio to such total amount as the amount allocated under part A to that State bears to the total amount allocated under that section to all the States.

"(3) MINIMUM.—No State shall receive a grant under paragraph (1) in any fiscal year in an amount which is less than \$250,000, or one-half of 1 percent of the amount appropriated under section 1002(b) and not reserved under subsections (a), (b), and (c) for such year, whichever is greater.

"(e) DEFINITIONS.—For the purpose of this part—

"(1) the term 'eligible entity' means a partnership composed of both—

"(A) a local educational agency; and

"(B) a nonprofit community-based organization, a public agency other than a local educational agency, an institution of higher education, or a public or private nonprofit organization other than a local educational agency, of demonstrated quality;

"(2) the term 'eligible organization' means any public or private nonprofit organization with a record of providing effective services to family literacy providers, such as the National Center for Family Literacy, Parents as Teachers, Inc., the Home Instruction Program for Preschool Youngsters, and the Home and School Institute, Inc.;

"(3) the terms 'Indian tribe' and 'tribal organization' have the meanings given such terms in section 4 of the Indian Self-Determination and Education Assistance Act; and

"(4) the term 'State' includes each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

"SEC. 1203. STATE PROGRAMS.

"(a) STATE LEVEL ACTIVITIES.—Each State that receives a grant under section 1202(d)(1) may use not more than 5 percent of the grant funds for the costs of—

"(1) administration; and

"(2) providing, through one or more subgrants or contracts, technical assistance for program improvement and replication, to eligible entities that receive subgrants under subsection (b).

20 USC 63

"(b) SUBGRANTS FOR LOCAL PROGRAMS.—

"(1) IN GENERAL.—Each State shall use the grant funds received under section 1202(d)(1) and not reserved under subsection (a) to award subgrants to eligible entities to carry out Even Start programs.

"(2) MINIMUM.—No State shall award a subgrant under paragraph (1) in an amount less than \$75,000, except that a State may award one subgrant in each fiscal year of sufficient size, scope, and quality to be effective in an amount less than \$75,000 if, after awarding subgrants under paragraph (1) for such fiscal year in amounts of \$75,000 or greater, less than \$75,000 is available to the State to award such subgrants.

"SEC. 1204. USES OF FUNDS.

"(a) IN GENERAL.—In carrying out an Even Start program under this part, a recipient of funds under this part shall use such funds to pay the Federal share of the cost of providing family-centered education programs that involve parents and children, from birth through age seven, in a cooperative effort to help parents become full partners in the education of their children and to assist children in reaching their full potential as learners.

"(b) FEDERAL SHARE LIMITATION.—

"(1) IN GENERAL.—(A) Except as provided in paragraph (2), the Federal share under this part may not exceed—

"(i) 90 percent of the total cost of the program in the first year that such program receives assistance under this part or its predecessor authority;

"(ii) 80 percent in the second such year;

"(iii) 70 percent in the third such year;

"(iv) 60 percent in the fourth such year; and

"(v) 50 percent in any subsequent such year.

"(B) The remaining cost of a program assisted under this part may be provided in cash or in kind, fairly evaluated and may be obtained from any source, including other Federal funds under this Act.

"(2) WAIVER.—The State educational agency may waive, in whole or in part, the cost-sharing requirement described in paragraph (1) for an eligible entity if such entity—

"(A) demonstrates that such entity otherwise would not be able to participate in the program assisted under this part; and

"(B) negotiates an agreement with the State educational agency with respect to the amount of the remaining cost to which the waiver will be applicable.

"(3) PROHIBITION.—Federal funds provided under this part may not be used for the indirect costs of a program assisted under this part, except that the Secretary may waive this paragraph if an eligible recipient of funds reserved under section 1202(a)(1)(C) demonstrates to the Secretary's satisfaction that such recipient otherwise would not be able to participate in the program assisted under this part.

"SEC. 1205. PROGRAM ELEMENTS.

"Each program assisted under this part shall—

"(1) include the identification and recruitment of families most in need of services provided under this part, as indicated by a low level of income, a low level of adult literacy or English

language proficiency of the eligible parent or parents, and other need-related indicators;

"(2) include screening and preparation of parents, including teenage parents and children to enable such parents to participate fully in the activities and services provided under this part, including testing, referral to necessary counseling, other developmental and support services, and related services;

"(3) be designed to accommodate the participants' work schedule and other responsibilities, including the provision of support services, when such services are unavailable from other sources, necessary for participation in the activities assisted under this part, such as—

"(A) scheduling and locating of services to allow joint participation by parents and children;

"(B) child care for the period that parents are involved in the program provided under this part; and

"(C) transportation for the purpose of enabling parents and their children to participate in programs authorized by this part;

"(4) include high-quality instructional programs that promote adult literacy and empower parents to support the educational growth of their children, developmentally appropriate early childhood educational services, and preparation of children for success in regular school programs;

"(5) include special training of staff, including child care staff, to develop the skills necessary to work with parents and young children in the full range of instructional services offered through this part;

"(6) provide and monitor integrated instructional services to participating parents and children through home-based programs;

"(7) operate on a year-round basis, including the provision of some program services, instructional or enrichment, during the summer months;

"(8) be coordinated with—

"(A) programs assisted under other parts of this title and this Act;

"(B) any relevant programs under the Adult Education Act, the Individuals with Disabilities Education Act, and the Job Training Partnership Act; and

"(C) the Head Start program, volunteer literacy programs, and other relevant programs;

"(9) ensure that the programs will serve those families most in need of the activities and services provided by this part; and

"(10) provide for an independent evaluation of the program.

"SEC. 1206. ELIGIBLE PARTICIPANTS.

"(a) IN GENERAL.—Except as provided in subsection (b), eligible participants in an Even Start program are—

"(1) a parent or parents—

"(A) who are eligible for participation in an adult basic education program under the Adult Education Act; or

"(B) who are within the State's compulsory school attendance age range, so long as a local educational agency provides (or ensures the availability of) the basic education component required under this part; and

20 USC 6366.

"(2) the child or children, from birth through age seven, of any individual described in paragraph (1).

"(b) ELIGIBILITY FOR CERTAIN OTHER PARTICIPANTS.—

"(1) **IN GENERAL.**—Family members of eligible participants described in subsection (a) may participate in activities and services provided under this part, when appropriate to serve the purpose of this part.

"(2) **SPECIAL RULE.**—Any family participating in a program assisted under this part that becomes ineligible for such participation as a result of one or more members of the family becoming ineligible for such participation may continue to participate in the program until all members of the family become ineligible for such participation, which—

"(A) in the case of a family in which ineligibility was due to the child or children of such family attaining the age of eight, shall be in two years or when the parent or parents become ineligible due to educational advancement, whichever occurs first; and

"(B) in the case of a family in which ineligibility was due to the educational advancement of the parent or parents of such family, shall be when all children in the family attain the age of eight.

20 USC 6367

"SEC. 1207. APPLICATIONS.

"(a) **SUBMISSION.**—To be eligible to receive a subgrant under this part, an eligible entity shall submit an application to the State educational agency in such form and containing or accompanied by such information as the State educational agency shall require.

"(b) **REQUIRED DOCUMENTATION.**—Each application shall include documentation, satisfactory to the State educational agency, that the eligible entity has the qualified personnel needed—

"(1) to develop, administer, and implement an Even Start program under this part; and

"(2) to provide access to the special training necessary to prepare staff for the program, which may be offered by an eligible organization.

"(c) PLAN.—

"(1) **IN GENERAL.**—Such application shall also include a plan of operation for the program which shall include—

"(A) a description of the program goals;

"(B) a description of the activities and services that will be provided under the program, including a description of how the program will incorporate the program elements required by section 1205;

"(C) a description of the population to be served and an estimate of the number of participants to be served;

"(D) as appropriate, a description of the applicant's collaborative efforts with institutions of higher education, community-based organizations, the State educational agency, private elementary schools, or other eligible organizations in carrying out the program for which assistance is sought;

"(E) a statement of the methods that will be used—

"(i) to ensure that the programs will serve families most in need of the activities and services provided by this part;

"(ii) to provide services under this part to individuals with special needs, such as individuals with limited English proficiency and individuals with disabilities; and

"(iii) to encourage participants to remain in the program for a time sufficient to meet the program's purpose; and

"(F) a description of how the plan is integrated with other programs under this Act, the Goals 2000: Educate America Act, or other Acts, as appropriate, consistent with section 14306.

"(2) **DURATION OF THE PLAN.**—Each plan submitted under paragraph (1)(A) shall—

"(A) remain in effect for the duration of the eligible entity's participation under this part; and

"(B) be periodically reviewed and revised by the eligible entity as necessary.

"(d) **CONSOLIDATED APPLICATION.**—The plan described in subsection (c)(1)(F) may be submitted as part of a consolidated application under section 14302.

"SEC. 1208. AWARD OF SUBGRANTS.

20 USC 6368

"(a) SELECTION PROCESS.—

"(1) **IN GENERAL.**—The State educational agency shall establish a review panel in accordance with paragraph (3) that will approve applications that—

"(A) are most likely to be successful in—

"(i) meeting the purpose of this part; and

"(ii) effectively implementing the program elements required under section 1205;

"(B) demonstrate that the area to be served by such program has a high percentage or a large number of children and families who are in need of such services as indicated by high levels of poverty, illiteracy, unemployment, limited-English proficiency, or other need-related indicators, including a high percentage of children to be served by the program who reside in a school attendance area eligible for participation in programs under part A;

"(C) provide services for at least a three-year age range, which may begin at birth;

"(D) demonstrate the greatest possible cooperation and coordination between a variety of relevant service providers in all phases of the program;

"(E) include cost-effective budgets, given the scope of the application;

"(F) demonstrate the applicant's ability to provide the Federal share required by section 1204(b);

"(G) are representative of urban and rural regions of the State; and

"(H) show the greatest promise for providing models that may be adopted by other local educational agencies.

"(2) **PRIORITY FOR SUBGRANTS.**—The State educational agency shall give priority for subgrants under this subsection to applications that—

"(A) target services primarily to families described in paragraph (1)(B); or

"(B) are located in areas designated as empowerment zones or enterprise communities.

"(3) **REVIEW PANEL.**—A review panel shall consist of at least three members, including one early childhood professional, one adult education professional, and one or more of the following individuals:

"(A) A representative of a parent-child education organization.

"(B) A representative of a community-based literacy organization.

"(C) A member of a local board of education.

"(D) A representative of business and industry with a commitment to education.

"(E) An individual who has been involved in the implementation of programs under this title in the State.

"(b) **DURATION.**—

"(1) **IN GENERAL.**—Subgrants under this part may be awarded for a period not to exceed four years.

"(2) **STARTUP PERIOD.**—The State educational agency may provide subgrant funds to an eligible recipient, at such recipient's request, for a three- to six-month startup period during the first year of the four-year grant period, which may include staff recruitment and training, and the coordination of services, before requiring full implementation of the program.

"(3) **CONTINUING ELIGIBILITY.**—In awarding subgrant funds to continue a program under this part for the second, third, or fourth year, the State educational agency shall review the progress being made toward meeting the objectives of the program after the conclusion of the startup period, if any.

"(4) **INSUFFICIENT PROGRESS.**—The State educational agency may refuse to award subgrant funds if such agency finds that sufficient progress has not been made toward meeting such objectives, but only after affording the applicant notice and an opportunity for a hearing.

"(5) **GRANT RENEWAL.**—(A) An eligible entity that has previously received a subgrant under this part may reapply under this part for additional subgrants. An eligible recipient may receive funds under this part for a period not to exceed eight years.

"(B) The Federal share of any subgrant renewed under subparagraph (A) shall not exceed 50 percent in any fiscal year.

20 USC 6369

"SEC. 1209. EVALUATION.

"From funds reserved under section 1202(b)(1), the Secretary shall provide for an independent evaluation of programs assisted under this part—

"(1) to determine the performance and effectiveness of programs assisted under this part; and

"(2) to identify effective Even Start programs assisted under this part that can be duplicated and used in providing technical assistance to Federal, State, and local programs.

20 USC 6370

"SEC. 1210. CONSTRUCTION.

"Nothing in this part shall be construed to prohibit a recipient of funds under this part from serving students participating in Even Start simultaneously with students with similar educational needs, in the same educational settings where appropriate.

"PART C—EDUCATION OF MIGRATORY CHILDREN

"SEC. 1301. PROGRAM PURPOSE.

20 USC 6391

"It is the purpose of this part to assist States to—

"(1) support high-quality and comprehensive educational programs for migratory children to help reduce the educational disruptions and other problems that result from repeated moves;

"(2) ensure that migratory children are provided with appropriate educational services (including supportive services) that address their special needs in a coordinated and efficient manner;

"(3) ensure that migratory children have the opportunity to meet the same challenging State content standards and challenging State student performance standards that all children are expected to meet;

"(4) design programs to help migratory children overcome educational disruption, cultural and language barriers, social isolation, various health-related problems, and other factors that inhibit the ability of such children to do well in school, and to prepare such children to make a successful transition to postsecondary education or employment; and

"(5) ensure that migratory children benefit from State and local systemic reforms.

"SEC. 1302. PROGRAM AUTHORIZED.

Grants
20 USC 6392

"In order to carry out the purpose of this part, the Secretary shall make grants to State educational agencies, or combinations of such agencies, to establish or improve, directly or through local operating agencies, programs of education for migratory children in accordance with this part.

"SEC. 1303. STATE ALLOCATIONS.

20 USC 6393

"(a) **STATE ALLOCATIONS.**—Each State (other than the Commonwealth of Puerto Rico) is entitled to receive under this part, for each fiscal year, an amount equal to—

"(1) the sum of the estimated number of migratory children aged three through 21 who reside in the State full time and the full-time equivalent of the estimated number of migratory children aged three through 21 who reside in the State part time, as determined in accordance with subsection (e); multiplied by

"(2) 40 percent of the average per-pupil expenditure in the State, except that the amount determined under this paragraph shall not be less than 32 percent, nor more than 48 percent, of the average expenditure per pupil in the United States.

"(b) **ALLOCATION TO PUERTO RICO.**—For each fiscal year, the amount for which the Commonwealth of Puerto Rico is eligible under this section shall be equal to—

"(1) the number of migratory children in Puerto Rico, determined under subsection (a)(1); multiplied by

"(2) the product of—

"(A) the percentage that the average per-pupil expenditure in Puerto Rico is of the lowest average per-pupil expenditure of any of the 50 States; and

"(B) 32 percent of the average per-pupil expenditure in the United States.

"(c) RATABLY REDUCTIONS; REALLOCATIONS.—

"(1) IN GENERAL.—(A) If, after the Secretary reserves funds under section 1308(c), the amount appropriated to carry out this part for any fiscal year is insufficient to pay in full the amounts for which all States are eligible, the Secretary shall ratably reduce each such amount.

"(B) If additional funds become available for making such payments for any fiscal year, the Secretary shall allocate such funds to States in amounts that the Secretary determines will best carry out the purpose of this part.

"(2) SPECIAL RULE.—(A) The Secretary shall further reduce the amount of any grant to a State under this part for any fiscal year if the Secretary determines, based on available information on the numbers and needs of migratory children in the State and the program proposed by the State to address such needs, that such amount exceeds the amount required under section 1304.

"(B) The Secretary shall reallocate such excess funds to other States whose grants under this part would otherwise be insufficient to provide an appropriate level of services to migratory children, in such amounts as the Secretary determines are appropriate.

"(d) CONSORTIUM ARRANGEMENTS.—

"(1) IN GENERAL.—In the case of a State that receives a grant of \$1,000,000 or less under this section, the Secretary shall consult with the State educational agency to determine whether consortium arrangements with another State or other appropriate entity would result in delivery of services in a more effective and efficient manner.

"(2) PROPOSALS.—Any State, regardless of the amount of such State's allocation, may submit a consortium arrangement to the Secretary for approval.

"(3) APPROVAL.—The Secretary shall approve a consortium arrangement under paragraph (1) or (2) if the proposal demonstrates that the arrangement will—

"(A) reduce administrative costs or program function costs for State programs; and

"(B) make more funds available for direct services to add substantially to the welfare or educational attainment of children to be served under this part.

"(e) DETERMINING NUMBERS OF ELIGIBLE CHILDREN.—In order to determine the estimated number of migratory children residing in each State for purposes of this section, the Secretary shall—

"(1) use such information as the Secretary finds most accurately reflects the actual number of migratory children;

"(2) develop and implement a procedure for more accurately reflecting cost factors for different types of summer and intersession program designs;

"(3) adjust the full-time equivalent number of migratory children who reside in each State to take into account—

"(A) the special needs of those children participating in special programs provided under this part that operate during the summer and intersession periods; and

"(B) the additional costs of operating such programs; and

"(4) conduct an analysis of the options for adjusting the formula so as to better direct services to the child whose education has been interrupted.

"SEC. 1304. STATE APPLICATIONS; SERVICES.

20 USC 6394

"(a) APPLICATION REQUIRED.—Any State desiring to receive a grant under this part for any fiscal year shall submit an application to the Secretary at such time and in such manner as the Secretary may require.

"(b) PROGRAM INFORMATION.—Each such application shall include—

"(1) a description of how, in planning, implementing, and evaluating programs and projects assisted under this part, the State and its local operating agencies will ensure that the special educational needs of migratory children, including preschool migratory children, are identified and addressed through a comprehensive plan for needs assessment and service delivery that meets the requirements of section 1306;

"(2) a description of the steps the State is taking to provide all migratory students with the opportunity to meet the same challenging State content standards and challenging State student performance standards that all children are expected to meet;

"(3) a description of how the State will use funds received under this part to promote interstate and intrastate coordination of services for migratory children, including how, consistent with procedures the Secretary may require, the State will provide for educational continuity through the timely transfer of pertinent school records, including information on health, when children move from one school to another, whether or not such move occurs during the regular school year;

"(4) a description of the State's priorities for the use of funds received under this part, and how such priorities relate to the State's assessment of needs for services in the State;

"(5) a description of how the State will determine the amount of any subgrants the State will award to local operating agencies, taking into account the requirements of paragraph (1); and

"(6) such budgetary and other information as the Secretary may require.

"(c) ASSURANCES.—Each such application shall also include assurances, satisfactory to the Secretary, that—

"(1) funds received under this part will be used only—

"(A) for programs and projects, including the acquisition of equipment, in accordance with section 1306(b)(1); and

"(B) to coordinate such programs and projects with similar programs and projects within the State and in other States, as well as with other Federal programs that can benefit migratory children and their families;

"(2) such programs and projects will be carried out in a manner consistent with the objectives of section 1114, subsections (b) and (d) of section 1115, section 1120, and subsections (b) and (c) of section 1120A, and part F;

"(3) in the planning and operation of programs and projects at both the State and local operating agency level, there is appropriate consultation with parent advisory councils for pro-

grams of one school year in duration, and that all such programs and projects are carried out, to the extent feasible, in a manner consistent with section 1118;

"(4) in planning and carrying out such programs and projects, there has been, and will be, adequate provision for addressing the unmet education needs of preschool migratory children;

"(5) the effectiveness of such programs and projects will be determined, where feasible, using the same approaches and standards that will be used to assess the performance of students, schools, and local educational agencies under part A;

"(6) to the extent feasible, such programs and projects will provide for—

"(A) advocacy and outreach activities for migratory children and their families, including informing such children and families of, or helping such children and families gain access to, other education, health, nutrition, and social services;

"(B) professional development programs, including mentoring, for teachers and other program personnel;

"(C) family literacy programs, including such programs that use models developed under Even Start;

"(D) the integration of information technology into educational and related programs; and

"(E) programs to facilitate the transition of secondary school students to postsecondary education or employment; and

"(7) the State will assist the Secretary in determining the number of migratory children under section 1303(e), through such procedures as the Secretary may require.

"(d) PRIORITY FOR SERVICES.—In providing services with funds received under this part, each recipient of such funds shall give priority to migratory children who are failing, or most at risk of failing, to meet the State's challenging State content standards and challenging State student performance standards, and whose education has been interrupted during the regular school year.

"(e) CONTINUATION OF SERVICES.—Notwithstanding any other provision of this part—

"(1) a child who ceases to be a migratory child during a school term shall be eligible for services until the end of such term;

"(2) a child who is no longer a migratory child may continue to receive services for one additional school year, but only if comparable services are not available through other programs; and

"(3) secondary school students who were eligible for services in secondary school may continue to be served through credit accrual programs until graduation.

20 USC 6902

SEC. 1305. SECRETARIAL APPROVAL; PEER REVIEW.

"(a) SECRETARIAL APPROVAL.—The Secretary shall approve each State application that meets the requirements of this part.

"(b) PEER REVIEW.—The Secretary may review any such application with the assistance and advice of State officials and other individuals with relevant expertise.

SEC. 1306. COMPREHENSIVE NEEDS ASSESSMENT AND SERVICE-DELIVERY PLAN; AUTHORIZED ACTIVITIES. 20 USC 6903

"(a) COMPREHENSIVE PLAN.—

"(1) IN GENERAL.—Each State that receives assistance under this part shall ensure that the State and its local operating agencies identify and address the special educational needs of migratory children in accordance with a comprehensive State plan that—

"(A) is integrated with other programs under this Act, the Goals 2000: Educate America Act, or other Acts, as appropriate, consistent with section 14306;

"(B) may be submitted as a part of consolidated application under section 14302;

"(C) provides that migratory children will have an opportunity to meet the same challenging State content standards and challenging State student performance standards, set out in such plans, that all children are expected to meet;

"(D) specifies measurable program goals and outcomes;

"(E) encompasses the full range of services that are available for migratory children from appropriate local, State, and Federal educational programs;

"(F) is the product of joint planning among such local, State, and Federal programs, including programs under part A, early childhood programs, and bilingual education programs under part A of title VII; and

"(G) provides for the integration of services available under this part with services provided by such other programs.

"(2) DURATION OF THE PLAN.—Each such comprehensive State plan shall—

"(A) remain in effect for the duration of the State's participation under this part; and

"(B) be periodically reviewed and revised by the State, as necessary, to reflect changes in the State's strategies and programs under this part.

"(b) AUTHORIZED ACTIVITIES.—

"(1) IN GENERAL.—In implementing the comprehensive plan described in subsection (a), each local operating agency shall have the flexibility to determine the activities to be provided with funds made available under this part, except that—

"(A) before funds under this part are used to provide services described in subparagraph (B), such funds shall be used to meet the identified needs of migratory children that—

"(i) result from the effects of their migratory lifestyle, or are needed to permit migratory children to participate effectively in school; and

"(ii) are not addressed by services provided under other programs, including programs under part A; and

"(B) all migratory children who are eligible to receive services under part A shall receive such services with funds provided under this part or under part A.

"(2) CONSTRUCTION.—Nothing in this part shall be construed to prohibit a local operating agency from serving migrant students simultaneously with students with similar educational needs, in the same educational settings where appropriate.

"(3) SPECIAL RULE.—Notwithstanding section 1114, a school that receives funds under this part shall continue to address the identified needs described in paragraph (1)(A).

20 USC 6397

"SEC. 1307. BYPASS.

"The Secretary may use all or part of any State's allocation under this part to make arrangements with any public or private nonprofit agency to carry out the purpose of this part in such State if the Secretary determines that—

"(1) the State is unable or unwilling to conduct educational programs for migratory children;

"(2) such arrangements would result in more efficient and economic administration of such programs; or

"(3) such arrangements would add substantially to the welfare or educational attainment of such children.

20 USC 6398

"SEC. 1308. COORDINATION OF MIGRANT EDUCATION ACTIVITIES.

"(a) IMPROVEMENT OF COORDINATION.—

"(1) IN GENERAL.—The Secretary, in consultation with the States, may make grants to, or enter into contracts with, State educational agencies, local educational agencies, institutions of higher education, and other public and private nonprofit entities to improve the interstate and intrastate coordination among such agencies' educational programs, including the establishment or improvement of programs for credit accrual and exchange, available to migratory students.

"(2) DURATION.—Grants under this subpart may be awarded for not more than five years.

"(b) ASSISTANCE AND REPORTING.—

"(1) STUDENT RECORDS.—(A) The Secretary shall solicit information on how student records are transferred from one school to another and shall solicit recommendations on whether new procedures and technologies for record transfer should be employed to better meet the needs of the migrant population.

"(B) The Secretary shall also seek recommendations on the most effective means for determining the number of students or full-time equivalent students in each State for the purpose of allocating funds under this part.

"(2) REPORT TO CONGRESS.—(A) Not later than April 30, 1995, the Secretary shall report to the Committee on Labor and Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives the Secretary's findings and recommendations, and shall include in this report, recommendations for interim measures that may be taken to ensure continuity of services in this program.

"(B) The Secretary shall assist States in developing effective methods for the transfer of student records and in determining the number of students or full-time equivalent students in each State if such interim measures are required.

"(c) AVAILABILITY OF FUNDS.—For the purpose of carrying out this section in any fiscal year, the Secretary shall reserve not more than \$6,000,000 of the amount appropriated to carry out this part for such year.

"(d) INCENTIVE GRANTS.—

"(1) IN GENERAL.—From the amounts made available to carry out this section, the Secretary shall reserve not more than \$1,500,000 to award, on a competitive basis, grants in

Records

the amount of not more than \$250,000 to State educational agencies with consortium agreements under section 1303(d).

"(2) LIMITATION.—Not less than 10 of such grants shall be awarded to States which receive allocations of less than \$1,000,000 if such States have approved agreements.

"SEC. 1309. DEFINITIONS.

20 USC 63

"As used in this part:

"(1) LOCAL OPERATING AGENCY.—The term 'local operating agency' means—

"(A) a local educational agency to which a State educational agency makes a subgrant under this part;

"(B) a public or nonprofit private agency with which a State educational agency or the Secretary makes an arrangement to carry out a project under this part; or

"(C) a State educational agency, if the State educational agency operates the State's migrant education program or projects directly.

"(2) MIGRATORY CHILD.—The term 'migratory child' means a child who is, or whose parent, spouse, or guardian is, a migratory agricultural worker, including a migratory dairy worker, or a migratory fisher, and who, in the preceding 36 months, in order to obtain, or accompany such parent, spouse, or guardian in order to obtain, temporary or seasonal employment in agricultural or fishing work—

"(A) has moved from one school district to another;

"(B) in a State that is comprised of a single school district, has moved from one administrative area to another within such district; or

"(C) resides in a school district of more than 15,000 square miles, and migrates a distance of 20 miles or more to a temporary residence to engage in a fishing activity.

"PART D—PREVENTION AND INTERVENTION PROGRAMS FOR CHILDREN AND YOUTH WHO ARE NEGLECTED, DELINQUENT, OR AT RISK OF DROPPING OUT

"SEC. 1401. FINDINGS; PURPOSE; PROGRAM AUTHORIZED.

20 USC 64

"(a) FINDINGS.—Congress finds the following:

"(1) A large percentage of youth in the juvenile justice system have poor academic achievement, are a year or more behind grade level, and have dropped out of school.

"(2) There is a strong correlation between academic failure and involvement in delinquent activities.

"(3) Preventing students from dropping out of local schools and addressing the educational needs of delinquent youth can help reduce the dropout rate and involvement in delinquent activities at the same time.

"(4) Many schools and correctional facilities fail to communicate regarding a youth's academic needs and students often return to their home school ill-prepared to meet current curriculum requirements.

"(5) Schools are often reluctant to deal with youth returning from facilities and receive no funds to deal with the unique educational and other needs of such youth.

"(6) A continuing need exists for activities and programs to reduce the incidence of youth dropping out of school.

"(7) Federal dropout prevention programs have demonstrated effectiveness in keeping children and youth in school.

"(8) Pregnant and parenting teens are a high at-risk group for dropping out of school and should be targeted by dropout prevention programs.

"(9) Such youth need a strong dropout prevention program which provides such youth with high level skills and which provides supports to youth returning from correctional facilities in order to keep such youth in school.

"(b) PURPOSE.—It is the purpose of this part—

"(1) to improve educational services to children in local and State institutions for neglected or delinquent children and youth so that such children and youth have the opportunity to meet the same challenging State content standards and challenging State student performance standards that all children in the State will be expected to meet;

"(2) to provide such children and youth the services needed to make a successful transition from institutionalization to further schooling or employment; and

"(3) to prevent at-risk youth from dropping out of school and to provide dropouts and youth returning from institutions with a support system to ensure their continued education.

"(c) PROGRAM AUTHORIZED.—In order to carry out the purpose of this part the Secretary shall make grants to State educational agencies to enable such agencies to award subgrants to State agencies and local educational agencies to establish or improve programs of education for neglected or delinquent children and youth at risk of dropping out of school before graduation.

20 USC 6422

"SEC. 1402. PAYMENTS FOR PROGRAMS UNDER THIS PART.

"(a) AGENCY SUBGRANTS.—Based on the allocation amount computed under section 1412, the Secretary shall allocate to each State educational agency amounts necessary to make subgrants to State agencies.

"(b) LOCAL SUBGRANTS.—Each State shall retain, for purposes of subpart 2, funds generated throughout the State under part A based on youth residing in local correctional facilities, or attending community day programs for delinquent children and youth.

"(c) USE OF REMAINING FUNDS.—Each State shall use any funds remaining after allocations are made under subsection (a).

"Subpart 1—State Agency Programs

20 USC 6431

"SEC. 1411. ELIGIBILITY.

"A State agency is eligible for assistance under this subpart if such State agency is responsible for providing free public education for children—

"(1) in institutions for neglected or delinquent children;

"(2) attending community day programs for neglected or delinquent children; or

"(3) in adult correctional institutions.

20 USC 6432

"SEC. 1412. ALLOCATION OF FUNDS.

"(a) SUBGRANTS TO STATE AGENCIES.—

"(1) IN GENERAL.—Each State agency described in section 1411 (other than an agency in the Commonwealth of Puerto

Rico) is eligible to receive a subgrant under this part, for each fiscal year, an amount equal to the product of—

"(A) the number of neglected or delinquent children and youth described in section 1411 who—

"(i) are enrolled for at least 15 hours per week in education programs in adult correctional institutions; and

"(ii) are enrolled for at least 20 hours per week—

"(I) in education programs in institutions for neglected or delinquent children; or

"(II) in community day programs for neglected or delinquent children; and

"(B) 40 percent of the average per-pupil expenditure in the State, except that the amount determined under this paragraph shall not be less than 32 percent, or more than 48 percent, of the average per-pupil expenditure in the United States.

"(2) SPECIAL RULE.—The number of neglected or delinquent children and youth determined under paragraph (1) shall—

"(A) be determined by the State agency by a deadline set by the Secretary, except that no State agency shall be required to determine the number of such children on a specific date set by the Secretary; and

"(B) be adjusted, as the Secretary determines is appropriate, to reflect the relative length of such agency's annual programs.

"(b) SUBGRANTS TO STATE AGENCIES IN PUERTO RICO.—For each fiscal year, the amount of the subgrant for which a State agency in the Commonwealth of Puerto Rico is eligible under this part shall be equal to—

"(1) the number of children and youth counted under subsection (a)(1) for the Commonwealth of Puerto Rico; multiplied by

"(2) the product of—

"(A) the percentage that the average per-pupil expenditure in the Commonwealth of Puerto Rico is of the lowest average per-pupil expenditure of any of the 50 States; and

"(B) 32 percent of the average per-pupil expenditure in the United States.

"(c) RATABLE REDUCTIONS IN CASE OF INSUFFICIENT APPROPRIATIONS.—If the amount appropriated for any fiscal year for subgrants under subsections (a) and (b) is insufficient to pay the full amount for which all agencies are eligible under such subsections, the Secretary shall ratably reduce each such amount.

"SEC. 1413. STATE REALLOCATION OF FUNDS.

20 USC 64

"If a State educational agency determines that a State agency does not need the full amount of the subgrant for which such State agency is eligible under this part for any fiscal year, the State educational agency may reallocate the amount that will not be needed to other eligible State agencies that need additional funds to carry out the purpose of this part, in such amounts as the State educational agency shall determine.

"SEC. 1414. STATE PLAN AND STATE AGENCY APPLICATIONS.

20 USC 64

"(a) STATE PLAN.—

"(1) IN GENERAL.—Each State educational agency that desires to receive a grant under this part shall submit, for approval by the Secretary, a plan for meeting the needs of neglected and delinquent youth and, where applicable, youth at risk of dropping out of school which is integrated with other programs under this Act, the Goals 2000: Educate America Act, or other Acts, as appropriate, consistent with section 14306.

"(2) CONTENTS.—Each such State plan shall—

"(A) describe the program goals, objectives, and performance measures established by the State that will be used to assess the effectiveness of the program in improving academic and vocational skills of children in the program;

"(B) provide that, to the extent feasible, such children will have the same opportunities to learn as such children would have if such children were in the schools of local educational agencies in the State; and

"(C) contain assurances that the State educational agency will—

"(i) ensure that programs assisted under this part will be carried out in accordance with the State plan described in this subsection;

"(ii) carry out the evaluation requirements of section 1416;

"(iii) ensure that the State agencies receiving subgrants under this subpart comply with all applicable statutory and regulatory requirements; and

"(iv) provide such other information as the Secretary may reasonably require.

"(3) DURATION OF THE PLAN.—Each such State plan shall—

"(A) remain in effect for the duration of the State's participation under this part; and

"(B) be periodically reviewed and revised by the State, as necessary, to reflect changes in the State's strategies and programs under this part.

"(b) SECRETARIAL APPROVAL; PEER REVIEW.—

"(1) IN GENERAL.—The Secretary shall approve each State plan that meets the requirements of this part.

"(2) PEER REVIEW.—The Secretary may review any State plan with the assistance and advice of individuals with relevant expertise.

"(c) STATE AGENCY APPLICATIONS.—Any State agency that desires to receive funds to carry out a program under this part shall submit an application to the State educational agency that—

"(1) describes the procedures to be used, consistent with the State plan under section 1111, to assess the educational needs of the children to be served;

"(2) provides assurances that in making services available to youth in adult correctional facilities, priority will be given to such youth who are likely to complete incarceration within a 2-year period;

"(3) describes the program, including a budget for the first year of the program, with annual updates to be provided to the State educational agency;

"(4) describes how the program will meet the goals and objectives of the State plan under this subpart;

"(5) describes how the State agency will consult with experts and provide the necessary training for appropriate staff, to ensure that the planning and operation of institution-wide projects under section 1416 are of high quality;

"(6) describes how the agency will carry out the evaluation requirements of section 14701 and how the results of the most recent evaluation are used to plan and improve the program;

"(7) includes data showing that the agency has maintained fiscal effort required of a local educational agency, in accordance with section 14501 of this title;

"(8) describes how the programs will be coordinated with other appropriate State and Federal programs, such as programs under the Job Training Partnership Act, vocational education programs, State and local dropout prevention programs, and special education programs;

"(9) describes how appropriate professional development will be provided to teachers and other staff;

"(10) designates an individual in each affected institution to be responsible for issues relating to the transition of children and youth from the institution to locally operated programs;

"(11) describes how the agency will, endeavor to coordinate with businesses for training and mentoring for participating youth;

"(12) provides assurances that the agency will assist in locating alternative programs through which students can continue their education if students are not returning to school after leaving the correctional facility;

"(13) provides assurances that the agency will work with parents to secure parents' assistance in improving the educational achievement of their children and preventing their children's further involvement in delinquent activities;

"(14) provides assurances that the agency works with special education youth in order to meet an existing individualized education program and an assurance that the agency will notify the youth's local school if such youth—

"(A) is identified as in need of special education services while the youth is in the facility; and

"(B) intends to return to the local school;

"(15) provides assurances that the agency will work with youth who dropped out of school before entering the facility to encourage the youth to reenter school once the term of the youth has been completed or provide the youth with the skills necessary to gain employment, continue the education of the youth, or achieve a secondary school diploma or the recognized equivalent if the youth does not intend to return to school;

"(16) provides assurances that teachers and other qualified staff are also trained to work with children with disabilities and other students with special needs taking into consideration the unique needs of such students;

"(17) describes any additional services provided to youth, such as career counseling, and assistance in securing student loans and grants; and

"(18) provides assurances that the program under this subpart will be coordinated with any programs operated under the Juvenile Justice and Delinquency Prevention Act of 1974 or other comparable programs, if applicable.

"SEC. 1415. USE OF FUNDS.**"(a) IN GENERAL.—**

"(1) USES.—A State agency shall use funds received under this subpart only for programs and projects that—

"(A) are consistent with the State plan under section 1414(a); and

"(B) concentrate on providing participants with the knowledge and skills needed to make a successful transition to secondary school completion, further education, or employment.

"(2) PROGRAMS AND PROJECTS.—Such programs and projects—

"(A) may include the acquisition of equipment;

"(B) shall be designed to support educational services that—

"(i) except for institution-wide projects under section 1416, are provided to children identified by the State agency as failing, or most at risk of failing, to meet the State's challenging State content standards and challenging State student performance standards;

"(ii) supplement and improve the quality of the educational services provided to such children by the State agency; and

"(iii) afford such children an opportunity to learn to such challenging State standards;

"(C) shall be carried out in a manner consistent with section 1120A and part F of this title; and

"(D) may include the costs of meeting the evaluation requirements of section 14701.

"(b) SUPPLEMENT, NOT SUPPLANT.—A program under this subpart that supplements the number of hours of instruction students receive from State and local sources shall be considered to comply with the supplement, not supplant requirement of section 1120A without regard to the subject areas in which instruction is given during those hours.

"SEC. 1416. INSTITUTION-WIDE PROJECTS.

"A State agency that provides free public education for children and youth in an institution for neglected or delinquent children (other than an adult correctional institution) or attending a community-day program for such children may use funds received under this part to serve all children in, and upgrade the entire educational effort of, that institution or program if the State agency has developed, and the State educational agency has approved, a comprehensive plan for that institution or program that—

"(1) provides for a comprehensive assessment of the educational needs of all youth in the institution or program serving juveniles;

"(2) provides for a comprehensive assessment of the educational needs of youth aged 20 and younger in adult facilities who are expected to complete incarceration within a two-year period;

"(3) describes the steps the State agency has taken, or will take, to provide all children under age 21 with the opportunity to meet challenging State content standards and challenging State student performance standards in order to improve the likelihood that the students will complete second-

ary school, attain secondary diploma or its recognized equivalent, or find employment after leaving the institution;

"(4) describes the instructional program, pupil services, and procedures that will be used to meet the needs described in paragraph (1), including, to the extent feasible, the provision of mentors for students;

"(5) specifically describes how such funds will be used;

"(6) describes the measures and procedures that will be used to assess student progress;

"(7) describes how the agency has planned, and will implement and evaluate, the institution-wide or program-wide project in consultation with personnel providing direct instructional services and support services in institutions or community-day programs for neglected or delinquent children and personnel from the State educational agency; and

"(8) includes an assurance that the State agency has provided for appropriate training for teachers and other instructional and administrative personnel to enable such teachers and personnel to carry out the project effectively.

"SEC. 1417. THREE-YEAR PROGRAMS OR PROJECTS.

"If a State agency operates a program or project under this subpart in which individual children are likely to participate for more than one year, the State educational agency may approve the State agency's application for a subgrant under this part for a period of not more than three years.

"SEC. 1418. TRANSITION SERVICES.

"(a) TRANSITION SERVICES.—Each State agency shall reserve not more than 10 percent of the amount such agency receives under this subpart for any fiscal year to support projects that facilitate the transition of children from State-operated institutions to local educational agencies.

"(b) CONDUCT OF PROJECTS.—A project supported under this section may be conducted directly by the State agency, or through a contract or other arrangement with one or more local educational agencies, other public agencies, or private nonprofit organizations.

"(c) LIMITATION.—Any funds reserved under subsection (a) shall be used only to provide transitional educational services, which may include pupil services and mentoring, to neglected and delinquent children in schools other than State-operated institutions.

"(d) CONSTRUCTION.—Nothing in this section shall be construed to prohibit a school that receives funds under subsection (a) from serving neglected and delinquent children simultaneously with students with similar educational needs, in the same educational settings where appropriate.

"Subpart 2—Local Agency Programs**"SEC. 1421. PURPOSE.**

"The purpose of this subpart is to support the operation of local educational agency programs which involve collaboration with locally operated correctional facilities to—

"(1) carry out high quality education programs to prepare youth for secondary school completion, training, and employment, or further education;

"(2) provide activities to facilitate the transition of such youth from the correctional program to further education or employment; and

"(3) operate dropout prevention programs in local schools for youth at risk of dropping out of school and youth returning from correctional facilities.

20 USC 6452.

"SEC. 1422. PROGRAMS OPERATED BY LOCAL EDUCATIONAL AGENCIES.

"(a) **LOCAL SUBGRANTS.**—With funds retained made available under section 1402(b), the State educational agency shall award subgrants to local educational agencies with high numbers or percentages of youth residing in locally operated (including county operated) correctional facilities for youth (including facilities involved in day programs).

"(b) **SPECIAL RULE.**—A local educational agency which includes a correctional facility that operates a school is not required to operate a dropout prevention program if more than 30 percent of the youth attending such facility will reside outside the boundaries of the local educational agency upon leaving such facility.

"(c) **NOTIFICATION.**—A State educational agency shall notify local educational agencies within the State of the eligibility of such agencies to receive a subgrant under this subpart.

20 USC 6453.

"SEC. 1423. LOCAL EDUCATIONAL AGENCY APPLICATIONS.

"Eligible local educational agencies desiring assistance under this section shall submit an application to the State educational agency, containing such information as the State educational agency may require. Each such application shall include—

"(1) a description of the program to be assisted;

"(2) a description of formal agreements between—

"(A) the local educational agency; and

"(B) correctional facilities and alternative school programs serving youth involved with the juvenile justice system to operate programs for delinquent youth;

"(3) as appropriate, a description of how participating schools will coordinate with facilities working with delinquent youth to ensure that such youth are participating in an education program comparable to one operating in the local school such youth would attend;

"(4) as appropriate, a description of the dropout prevention program operated by participating schools and the types of services such schools will provide to at-risk youth in participating schools and youth returning from correctional facilities;

"(5) as appropriate, a description of the youth expected to be served by the dropout prevention program and how the school will be coordinating existing educational programs to meet unique education needs;

"(6) as appropriate, a description of how schools will coordinate with existing social and health services to meet the needs of students at risk of dropping out of school and other participating students, including prenatal health care and nutrition services related to the health of the parent and child, parenting and child development classes, child care, targeted re-entry and outreach programs, referrals to community resources, and scheduling flexibility;

"(7) as appropriate, a description of any partnerships with local businesses to develop training and mentoring services for participating students;

"(8) as appropriate, a description of how the program will involve parents in efforts to improve the educational achievement of their children, assist in dropout prevention activities, and prevent the involvement of their children in delinquent activities;

"(9) a description of how the program under this subpart will be coordinated with other Federal, State, and local programs, such as programs under the Job Training and Partnership Act and vocational education programs serving this at-risk population of youth;

"(10) a description of how the program will be coordinated with programs operated under the Juvenile Justice and Delinquency Prevention Act of 1974 and other comparable programs, if applicable;

"(11) as appropriate, a description of how schools will work with probation officers to assist in meeting the needs of youth returning from correctional facilities;

"(12) a description of efforts participating schools will make to ensure correctional facilities working with youth are aware of a child's existing individualized education program; and

"(13) as appropriate, a description of the steps participating schools will take to find alternative placements for youth interested in continuing their education but unable to participate in a regular public school program.

"SEC. 1424. USES OF FUNDS.

"Funds provided to local educational agencies under this subpart may be used, where appropriate, for—

"(1) dropout prevention programs which serve youth at educational risk, including pregnant and parenting teens, youth who have come in contact with the juvenile justice system, youth at least one year behind their expected grade level, migrant youth, immigrant youth, students with limited-English proficiency and gang members;

"(2) the coordination of health and social services for such individuals if there is a likelihood that the provision of such services, including day care and drug and alcohol counseling, will improve the likelihood such individuals will complete their education; and

"(3) programs to meet the unique education needs of youth at risk of dropping out of school, which may include vocational education, special education, career counseling, and assistance in securing student loans or grants.

"SEC. 1425. PROGRAM REQUIREMENTS FOR CORRECTIONAL FACILITIES RECEIVING FUNDS UNDER THIS SECTION.

"Each correctional facility entering into an agreement with a local educational agency under section 1422(a) to provide services to youth under this section shall—

"(1) where feasible, ensure educational programs in juvenile facilities are coordinated with the student's home school, particularly with respect to special education students with an individualized education program;

"(2) notify the local school of a youth if the youth is identified as in need of special education services while in the facility;

20 USC 6

Contract
20 USC 1

"(3) where feasible, provide transition assistance to help the youth stay in school, including coordination of services for the family, counseling, assistance in accessing drug and alcohol abuse prevention programs, tutoring, and family counseling;

"(4) provide support programs which encourage youth who have dropped out to reenter school once their term has been completed or provide such youth with the skills necessary for such youth to gain employment or seek a secondary school diploma or its recognized equivalent;

"(5) work to ensure such facilities are staffed with teachers and other qualified staff who are trained to work with children with disabilities and other students with special needs taking into consideration the unique needs of such children and students;

"(6) ensure educational programs in correctional facilities are related to assisting students meet high educational standards;

"(7) use, to the extent possible, technology to assist in coordinating educational programs between the juvenile facility and the community school;

"(8) where feasible, involve parents in efforts to improve the educational achievement of their children and prevent the further involvement of such children in delinquent activities;

"(9) coordinate funds received under this program with other local, State, and Federal funds available to provide services to participating youth, such as funds under the Job Training Partnership Act, and vocational education funds;

"(10) coordinate programs operated under this subpart with activities funded under the Juvenile Justice and Delinquency Prevention Act of 1974 and other comparable programs, if applicable; and

"(11) if appropriate, work with local businesses to develop training and mentoring programs for participating youth.

20 USC 6456

"SEC. 1426. ACCOUNTABILITY.

"The State educational agency may—

"(1) reduce or terminate funding for projects under this section if a local educational agency does not show progress in reducing dropout rates for male students and for female students over a 3-year period; and

"(2) require juvenile facilities to demonstrate, after receiving assistance under this subpart for 3 years, that there has been an increase in the number of youth returning to school, obtaining a secondary school diploma or its recognized equivalent, or obtaining employment after such youth are released.

"Subpart 3—General Provisions

20 USC 6471

"SEC. 1431. PROGRAM EVALUATIONS.

"(a) SCOPE OF EVALUATION.—Each State agency or local educational agency that conducts a program under subpart 1 or 2 shall evaluate the program, disaggregating data on participation by sex, and if feasible, by race, ethnicity, and age, not less than once every three years to determine the program's impact on the ability of participants to—

"(1) maintain and improve educational achievement;

"(2) accrue school credits that meet State requirements for grade promotion and secondary school graduation;

"(3) make the transition to a regular program or other education program operated by a local educational agency; and

"(4) complete secondary school (or secondary school equivalent requirements) and obtain employment after leaving the institution.

"(b) EVALUATION MEASURES.—In conducting each evaluation under subsection (a), a State agency or local educational agency shall use multiple and appropriate measures of student progress.

"(c) EVALUATION RESULTS.—Each State agency and local educational agency shall—

"(1) submit evaluation results to the State educational agency; and

"(2) use the results of evaluations under this section to plan and improve subsequent programs for participating children and youth.

20 USC 64

"SEC. 1432. DEFINITIONS.

"For the purpose of this part:

"(1) The term 'adult correctional institution' means a facility in which persons are confined as a result of a conviction for a criminal offense, including persons under 21 years of age.

"(2) The term 'at-risk youth' means school aged youth who are at risk of academic failure, have drug or alcohol problems, are pregnant or are parents, have come into contact with the juvenile justice system in the past, are at least one year behind the expected grade level for the age of the youth, have limited-English proficiency, are gang members, have dropped out of school in the past, or have high absenteeism rates at school.

"(3) The term 'community day program' means a regular program of instruction provided by a State agency at a community day school operated specifically for neglected or delinquent children.

"(4) The term 'institution for delinquent children and youth' means a public or private residential facility for the care of children who have been adjudicated to be delinquent or in need of supervision.

"(5) The term 'institution for neglected children' means a public or private residential facility, other than a foster home, that is operated for the care of children who have been committed to the institution or voluntarily placed in the institution under applicable State law, due to abandonment, neglect, or death of their parents or guardians.

"PART E—FEDERAL EVALUATIONS, DEMONSTRATIONS, AND TRANSITION PROJECTS

20 USC

"SEC. 1501. EVALUATIONS.

"(a) NATIONAL ASSESSMENT.—

"(1) IN GENERAL.—The Secretary shall conduct a national assessment of programs assisted under this title, in coordination with the ongoing National Evaluation under subsection (b) that shall be planned, reviewed, and conducted in consultation with an independent panel of researchers, State practitioners, local practitioners, and other appropriate individuals.

"(2) EXAMINATION.—The assessment shall examine how well schools, local educational agencies, and States are—

"(A) progressing toward the goal of all children served under this title reaching the State's challenging State content standards and challenging State student performance standards; and

"(B) accomplishing the purpose set forth in section 1001(d) to achieve the goal described in paragraph (1), including—

"(i) ensuring challenging State content standards and challenging State student performance standards for all children served under this title and aligning the efforts of States, local educational agencies, and schools to help such children reach such standards;

"(ii) providing children served under this title an enriched and accelerated educational program through schoolwide programs or through additional services that increase the amount and quality of instructional time that such children receive;

"(iii) promoting schoolwide reform and access for all children served under this title to effective instructional strategies and challenging academic content;

"(iv) significantly upgrading the quality of the curriculum and instruction by providing staff in participating schools with substantial opportunities for professional development;

"(v) using and evaluating the usefulness of opportunity-to-learn standards or strategies in improving learning in schools receiving assistance under this part;

"(vi) coordinating services provided under all parts of this title with each other, with other educational and pupil services, including preschool services, and, to the extent feasible, with health and social service programs funded from other sources;

"(vii) affording parents of children served under this title meaningful opportunities to participate in the education of their children at home and at school, such as the provision of family literacy services;

"(viii) distributing resources to areas where needs are greatest;

"(ix) improving accountability, as well as teaching and learning, by making assessments under this title congruent with State assessment systems; and

"(x) providing greater decisionmaking authority and flexibility to schools in exchange for greater responsibility for student performance.

"(3) NAEP INFORMATION.—Where feasible, the Secretary shall use information gathered from a variety of sources, including the National Assessment of Educational Progress, State evaluations, and available research studies, in carrying out this subsection.

"(4) INTERIM AND FINAL REPORTS.—The Secretary shall submit to the President and the appropriate committees of the Congress an interim report by January 1, 1996, summarizing the preliminary findings of the assessment and a final report of the findings of the assessment by January 1, 1998.

"(b) STUDIES AND DATA COLLECTION.—

"(1) IN GENERAL.—The Secretary may collect such data, as necessary, at the State, local, and school levels and conduct studies and evaluations, including national studies and evaluations, to assess on an ongoing basis the effectiveness of programs under this title and to report on such effectiveness on a periodic basis. The Secretary shall report not later than December 31, 1997 to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate on how schoolwide programs are meeting the needs of children from migratory families.

"(2) MINIMUM INFORMATION.—At a minimum, the Secretary shall collect trend information on the effect of programs under this title. Such data shall complement the data collected and reported under subsections (a) and (c).

"(c) NATIONAL EVALUATION OF PART A OF TITLE I.—

"(1) IN GENERAL.—The Secretary shall carry out an ongoing evaluation of the program assisted under part A of title I in order to provide the public, the Congress, and educators involved in such program, an accurate description of the short- and long-term effectiveness of such program and to provide information that can be used to improve such program's effectiveness in enabling students to meet challenging State content standards and challenging State student performance standards, graduate from secondary school, and make successful transitions to postsecondary education and work. Such evaluation shall—

"(A) have a longitudinal design that tracks cohorts of students within schools of differing poverty concentrations for at least three years which, when the cohorts are taken as a whole, provides a picture of such program's effectiveness over the elementary and secondary grades;

"(B) be separate and independent from State and local assessments and evaluations as required under this title;

"(C) utilize the highest available content standards that are generally accepted as national in scope;

"(D) provide information on all students, students served under part A, and, if funds are sufficient, information on students from low-income families, limited-English-proficient students, and students with disabilities; and

"(E) when feasible, collect, cross-tabulate, and report data by sex within race or ethnicity and socioeconomic status.

"(2) USE.—The Secretary shall use the results of the evaluation described in paragraph (1) as part of the national assessment required by subsection (a) and shall report the data from such evaluation to the Congress and the public at least as frequently as reports are made under subsection (a)(4).

"(d) DEVELOPMENTALLY APPROPRIATE MEASURES.—In conducting the national assessment under subsection (a) and the national ongoing evaluation under subsection (c), the Secretary shall use developmentally appropriate measures to assess student performance and progress.

"(e) PARENTAL INVOLVEMENT, STUDY, REPORT AND DISSEMINATION.—

Reports

Reports

"(1) **IN GENERAL.**—The Secretary, through the Office of Education Research and Improvement, shall conduct a study to identify and describe—

"(A) common barriers to effective parental involvement in the education of participating children; and

"(B) successful local policies and programs which improve parental involvement and the performance of participating children.

"(2) **DUTIES OF SECRETARY.**—The Secretary shall—

"(A) complete such study by December 31, 1996;

"(B) report the findings of such study to the Committee on Education and Labor of the House of Representatives and to the Committee on Labor and Human Resources of the Senate; and

"(C) disseminate the findings, relating to the successful local policies and programs which improve parental involvement and the performance of participating children, to local educational agencies.

Reports

20 USC 6492

"SEC. 1502. DEMONSTRATIONS OF INNOVATIVE PRACTICES.

"(a) **DEMONSTRATION PROGRAMS TO IMPROVE ACHIEVEMENT.**—

"(1) **IN GENERAL.**—From the funds appropriated for any fiscal year under section 1002(g)(2), the Secretary may make grants to State educational agencies, local educational agencies, other public agencies, nonprofit organizations, public or private partnerships involving business and industry organizations, and consortia of such entities to carry out demonstration projects that show the most promise of enabling children served under this title to meet challenging State content standards and challenging State student performance standards. Such projects shall include promising strategies such as—

"(A) accelerated curricula, the application of new technologies to improve teaching and learning, extended learning time, and a safe and enriched full-day environment for children to provide children the opportunity to reach such standards;

"(B) integration of education services with each other and with health, family, and other social services such as mentoring programs, particularly in empowerment zones and enterprise communities;

"(C) effective approaches to whole school reform;

"(D) programs that have been especially effective with limited-English-proficient children, migratory children and other highly mobile students, children leaving institutions for neglected or delinquent children and returning to school, and homeless children and youth;

"(E) programs which are especially effective in recruiting, inducting, and retaining highly qualified teachers for service in schools with low student achievement; and

"(F) programs that are built upon partnerships developed between elementary and middle schools, employers, and the community, which emphasize the integration of high quality academic and vocational learning, stress excellence and high expectations for success in academic subjects, instill responsibility, decisionmaking, problem solving, interpersonal skills, and other competencies in students, and make school relevant to the workplace and

the community, through applied and interactive teaching methodologies, team teaching strategies, learning opportunities connecting school, the workplace, and the community, and career exploration, awareness, and career guidance opportunities.

"(2) **EVALUATION.**—The Secretary shall evaluate the demonstration projects supported under this title, using rigorous methodological designs and techniques, including control groups and random assignment, to the extent feasible, to produce reliable evidence of effectiveness.

"(b) **PARTNERSHIPS.**—From funds appropriated under section 1002(g)(2) for any fiscal year, the Secretary may, directly or through grants or contracts, work in partnership with State educational agencies, local educational agencies, other public agencies, and nonprofit organizations to disseminate and use the highest quality research and knowledge about effective practices to improve the quality of teaching and learning in schools assisted under this title.

"SEC. 1503. INNOVATIVE ELEMENTARY SCHOOL TRANSITION PROJECTS. 20 USC

"(a) **IN GENERAL.**—From the amount appropriated under section 1002(g)(2), the Secretary shall provide not less than \$10,000,000, but not more than \$40,000,000 to support innovative transition projects in elementary schools authorized under this section.

"(b) **GRANTS.**—

"(1) **LOCAL PROGRAMS.**—The Secretary shall award grants to local educational agencies (including such agencies that operate Follow Through programs, Even Start, and other comparable programs) that have formed consortia with early childhood programs (including Head Start, where available) for the purpose of supporting projects, for children from low-income families who previously attended a Head Start program, Even Start program, or similar preschool program, which provide education and other services in early elementary grades.

"(2) **PURPOSES OF PROJECTS.**—The purposes of projects assisted under this section are to—

"(A) assist eligible children and their families in making a successful transition from preschool through the early elementary grades;

"(B) enable eligible children to achieve challenging academic standards through a model, developmentally appropriate, instructional program; and

"(C) support the active involvement of parents in the education of their children.

"(3) **COMPONENTS.**—A program assisted under this subsection—

"(A) shall provide transition to elementary school activities, such as—

"(i) development of a transition plan for each child which provides for instruction, support, and assistance through the third grade;

"(ii) transfer of each child's preschool records to the elementary school (with parental consent);

"(iii) formal meetings between a child's parent, preschool teacher, and kindergarten or first grade teacher; and

"(iv) kindergarten visits and other orientation activities for preschool children prior to enrollment in elementary school;

"(B) shall use an instructional approach which—

"(i) has been shown to be effective in providing transition services; or

"(ii) shows promise of providing effective transition services;

"(C) shall provide for the direct participation of the parents of such children in the development, operation, and evaluation of such program;

"(D) shall provide directly or through referral comprehensive educational, health, nutritional, social, and other services that aid in the continued development of eligible children to their full potential;

"(E) shall ensure that each supportive services team developed pursuant to subsection (c)(8) includes a sufficient number of family service coordinators to adequately meet the needs of eligible children and their families; and

"(F) may provide for the use of mentors who are secondary school students to assist elementary and secondary students who were formerly enrolled in Head Start or Even Start programs.

"(c) APPLICATIONS.—An application for a grant under subsection (b) shall—

"(1) describe the goals which the applicant plans to achieve;

"(2) describe the instructional approach the applicant will use, and the manner in which the applicant will implement such approach;

"(3) describe the transition to elementary school activities for which assistance is sought;

"(4) describe the members of the consortium required by subsection (b)(1);

"(5) shall include evidence that the consortium members each have performed assessments of their programs to ensure that such members have the capacity to address the health, immunization, mental health, nutrition, parenting education, literacy, social service (including substance abuse, education, and prevention), and educational needs of low-income students and their families whom the consortium members plan to serve;

"(6) describe how the project will be coordinated with title I, title VII, and other programs under this Act;

"(7) provide evidence that the proposed transition activities, instruction, and other services to be provided by the applicant have been specifically designed to build upon, and coordinate with, the services provided to eligible children and their parents by local Head Start, Even Start, and other similar preschool programs;

"(8) include—

"(A) a plan for the development of a support services team, including a family service coordinator, to—

"(i) assist families, administrators, and teachers to respond to health, immunization, mental health, nutrition, social service, and educational needs of eligible students;

"(ii) conduct home visits and help students and their families to obtain health, immunization, mental

health, nutrition, parenting education, literacy, education (including tutoring and remedial services), and social services (including substance abuse treatment, education, and prevention), for which students and their families are eligible;

"(iii) coordinate a family outreach and support program, including a plan for involving parents in the management of the program under subsection (b), in cooperation with parental involvement efforts undertaken pursuant to this part, the Head Start Act, and the Individuals with Disabilities Education Act, including school-parent compacts, parent volunteer activities, parent education services and training such as the services and training provided through the Even Start program, and regular meetings; and

"(iv) assist families, administrators, and teachers in enhancing developmental continuity between the programs assisted under the Head Start Act, other early childhood development programs, and elementary school classes; or

"(B) a description of the comprehensive, coordinated services currently provided to children eligible for services under this section;

"(9) designate a member of the support services team described in paragraph (8) who will serve as the supervisor of such support services team;

"(10) contain assurances that State agencies, local agencies, and community-based organizations that provide support services to low-income students served by the local educational agency consortium have been consulted in the preparation of the plan described in paragraph (8);

"(11) contain assurances that State agencies, local agencies, and community-based organizations served by the local educational agency consortium will designate an individual who will act as a liaison to the support services team described in paragraph (8);

"(12) describe the target population to be served by the support services team described in paragraph (8), including families previously served under part C of the Head Start Act, or other comparable early childhood development program;

"(13) describe the support services to be provided, directly or through referral;

"(14) describe the Federal and non-Federal resources that will be used to carry out the program;

"(15) contain assurances that the support services described in paragraph (8) will be equipped to assist children and families with limited-English proficiency or with disabilities;

"(16) include a plan describing how the program assisted under this section will be sustained, with funding received under part A or other Federal and non-Federal funding sources, after the grant has expired; and

"(17) contain such other information as the Secretary may reasonably require.

"(d) NATIONAL ACTIVITIES.—

"(1) IN GENERAL.—Of the amount provided under subsection (a) to carry out this section, the Secretary shall use not less than \$3,000,000 but not more than \$5,000,000 to carry out

national activities to evaluate and improve the use of innovative transition programs.

"(2) **TECHNICAL ASSISTANCE AND TRAINING.**—Of the amount reserved under paragraph (1), the Secretary shall use not less than \$3,000,000 to award grants to public and private nonprofit agencies, institutions, and organizations to provide to consortia which receive grants under subsection (b)(1) and, to the extent feasible, to schools that are designated schoolwide programs under section 1114—

"(A) technical assistance in the implementation and expanded use of model transition and instructional approaches, including the use of appropriate pedagogy, efforts to increase parental involvement and providing access to coordinated services; and

"(B) training in conjunction with the implementation and operation of such model approaches.

"(3) **COORDINATION AND DISSEMINATION.**—The Secretary, in cooperation with the Secretary of Health and Human Services, may promote coordination of activities assisted under this section with the projects funded under the Head Start Transition Projects Act, including a process to—

"(A) collect information on program activities and results; and

"(B) disseminate information on successful transition programs.

"(4) **EVALUATION.**—(A) The Secretary, in cooperation with the Secretary of Health and Human Services, is authorized to award grants, or enter into contracts or cooperative agreements, to provide for the evaluation of the programs assisted under this section.

"(B) To the extent practicable, such evaluations shall be conducted jointly with evaluations of Head Start Transition Projects.

"(5) **OTHER ACTIVITIES.**—The Secretary may undertake other activities to promote the replication of successful transition programs.

"(e) **COORDINATION OF REGULATIONS.**—The Secretary shall work with the Secretary of Health and Human Services to coordinate regulations promulgated under this section with regulations promulgated under the Head Start Act Amendments of 1994.

"(f) **GENERAL PROVISIONS.**—

"(1) **PRIORITY.**—In awarding grants under subsection (b)(1), the Secretary shall give priority to applicants that—

"(A) will operate a project under this section at a school designated as a schoolwide program under section 1114;

"(B) serve local educational agencies that have the highest numbers or percentages of poor children; and

"(C) demonstrate a significant commitment by the community to the proposed program, as evidenced by the level of resources, both cash and in-kind, from other public and private sources available to the consortium.

"(2) **SUPPLEMENT.**—An application for assistance under this section may not be approved unless the Secretary is satisfied that the services to be provided by the applicant will supplement, and not supplant, services that previously provided other Federal assistance.

Grants

"(3) **SUFFICIENT SIZE.**—A grant under subsection (b)(1) shall be of sufficient size and scope to enable the grantee to operate a project which meets the requirements of this section.

"(4) **URBAN AND RURAL GRANTS.**—To the extent practicable, the Secretary shall award grants under subsection (b)(1) to consortia in both urban and rural areas.

"(5) **RENEWAL GRANT.**—To be eligible to renew a grant under the section, an applicant that received assistance under subsection (b)(1) shall demonstrate that the project achieved the purposes described in subsection (b)(2).

"(g) **DEFINITIONS.**—As used in this section:

"(1) **FAMILY SERVICES COORDINATOR.**—The term 'family services coordinator' means an individual who has the skills necessary to assist families in obtaining support services and may be an existing employee of a local educational agency or Head Start agency.

"(2) **HEAD START AGENCY.**—The term 'Head Start agency' means any agency designated as a Head Start agency under the Head Start Act (42 U.S.C. 9831 et seq.).

"(3) **SUPPORT SERVICES.**—The term 'support services' means services that enhance the physical, social, emotional, and intellectual development of low-income children, including the provision of necessary support to the parents and other family members of such children.

"PART F—GENERAL PROVISIONS

"SEC. 1601. FEDERAL REGULATIONS.

20 USC 6511.

"(a) **IN GENERAL.**—The Secretary is authorized to issue such regulations as are necessary to reasonably ensure that there is compliance with this title.

"(b) **NEGOTIATED RULEMAKING PROCESS.**—

"(1) **IN GENERAL.**—Prior to publishing in the Federal Register proposed regulations to carry out this title, the Secretary shall obtain the advice and recommendations of representatives of Federal, State, and local administrators, parents, teachers, and members of local boards of education involved with the implementation and operation of programs under this title.

"(2) **MEETINGS AND ELECTRONIC EXCHANGE.**—Such advice and recommendation may be obtained through such mechanisms as regional meetings and electronic exchanges of information.

"(3) **PROPOSED REGULATIONS.**—After obtaining such advice and recommendations, and prior to publishing proposed regulations, the Secretary shall—

"(A) establish a negotiated rulemaking process on a minimum of two key issues, including—

"(i) schoolwide programs; and

"(ii) standards and assessment;

"(B) select individuals to participate in such process from among individuals or groups which provided advice and recommendations, including representation from all geographic regions of the United States; and

"(C) prepare a draft of proposed policy options that shall be provided to the individuals selected by the Secretary under subparagraph (A) not less than 15 days prior to the first meeting under such process.

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"(4) PROCESS.—Such process—

"(A) shall be conducted in a timely manner to ensure that final regulations are issued by the Secretary not later than July 1, 1995; and

"(B) shall not be subject to the Federal Advisory Committee Act but shall otherwise follow the provisions of the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561 et seq.).

"(5) **EMERGENCY SITUATION.**—In an emergency situation in which regulations to carry out this title must be issued with a very limited time to assist State and local educational agencies with the operation of a program under this title, the Secretary may issue proposed regulations without following such process but shall, immediately thereafter and prior to issuing final regulations, conduct regional meetings to review such proposed regulations.

"(c) **LIMITATION.**—Regulations to carry out this part may not require local programs to follow a particular instructional model, such as the provision of services outside the regular classroom or school program.

20 USC 6512

"SEC. 1602. COORDINATION OF FEDERAL, STATE, AND LOCAL ADMINISTRATION.

"(a) **PROGRAM ASSISTANCE MANUAL.**—The Secretary shall, not later than six months after the publication of final regulations under this title, prepare and distribute to State educational agencies, State agencies operating programs under parts C and D, and local educational agencies, and shall make available to parents and other interested individuals, organizations, and agencies, a manual for this title to—

"(1) assist such agencies in—

"(A) enhancing the quality, increasing the depth, or broadening the scope of activities for programs under this title;

"(B) applying for program funds under this title; and

"(C) meeting the program objectives under this title;

"(2) assist State educational agencies in achieving proper and efficient administration of programs funded under this title;

"(3) assist parents to become involved in the planning for, and implementation and evaluation of, programs and projects under this title; and

"(4) ensure that officers and employees of the Department, including officers and employees of the Secretary and officers and employees of the Department charged with auditing programs carried on under this title, uniformly interpret, apply, and enforce requirements under this title throughout the United States.

"(b) **CONTENTS OF POLICY MANUAL.**—The policy manual shall, with respect to programs carried out under this title, contain descriptions, statements, procedural and substantive rules, opinions, policy statements and interpretations and indices to and amendments of the foregoing, and in particular, whether or not such descriptions, statements, procedural and substantive rules, opinions, policy statements and interpretations and indices are required under section 552 of title 5, United States Code, to be published or made available. The manual shall include—

"(1) a statement of the requirements applicable to the programs carried out under this title, including such requirements contained in this title, the General Education Provisions Act, other applicable statutes, and regulations issued under the authority of such statutes;

"(2) an explanation of the purpose of each requirement and its interrelationship with other applicable requirements; and

"(3) model forms and instructions developed by the Secretary for use by State and local educational agencies, at the discretion of such agencies, including, application forms, application review checklists, and instruments for monitoring programs under this title.

"(c) **RESPONSE TO INQUIRIES.**—The Secretary shall respond with written guidance not later than 90 days after any written request (return receipt requested) from a State or local educational agency regarding a policy, question, or interpretation under this title is received. In the case of a request from a local educational agency, such agency is required to address its request to the State educational agency first.

20 USC 651

"SEC. 1603. STATE ADMINISTRATION.**"(a) RULEMAKING.—**

"(1) **IN GENERAL.**—Each State that receives funds under this title shall—

"(A) ensure that any State rules, regulations, and policies relating to this title conform to the purposes of this title and provide any such proposed rules, regulations, and policies to the committee of practitioners under subsection (b) for their review and comment;

"(B) minimize such rules, regulations, and policies to which their local educational agencies and schools are subject; and

"(C) identify any such rule, regulation, or policy as a State-imposed requirement.

"(2) **SUPPORT AND FACILITATION.**—State rules, regulations, and policies under this title shall support and facilitate local educational agency and school-level systemic reform designed to enable all children to meet the challenging State content standards and challenging State student performance standards.

"(b) COMMITTEE OF PRACTITIONERS.—

"(1) **IN GENERAL.**—Each State educational agency shall create a State committee of practitioners to advise the State in carrying out its responsibilities under this title.

"(2) **MEMBERSHIP.**—Each such committee shall include—

"(A) as a majority of its members, representatives from local educational agencies;

"(B) administrators;

"(C) teachers, including vocational educators;

"(D) parents;

"(E) members of local boards of education;

"(F) representatives of private school children; and

"(G) pupil services personnel.

"(3) **DUTIES.**—The duties of such committee shall include a review, prior to publication, of any proposed or final State rule or regulation pursuant to this title. In an emergency situa-

tion where such rule or regulation must be issued within a very limited time to assist local educational agencies with the operation of the program under this title, the State educational agency may issue a regulation without prior consultation, but shall immediately thereafter convene the State committee of practitioners to review the emergency regulation prior to issuance in final form.

"(c) PAYMENT FOR STATE ADMINISTRATION.—Each State may reserve for the proper and efficient performance of its duties under this title the greater of—

"(1) 1.00 percent of the funds received under subsections (a), (c), and (d) of section 1002; or

"(2) \$400,000, or \$50,000 in the case of the outlying areas.

20 USC 6514

"SEC. 1604. CONSTRUCTION.

"(a) PROHIBITION OF FEDERAL MANDATES, DIRECTION, OR CONTROL.—Nothing in this title shall be construed to authorize an officer or employee of the Federal Government to mandate, direct, or control a State, local educational agency, or school's specific instructional content or pupil performance standards and assessments, curriculum, or program of instruction as a condition of eligibility to receive funds under this title.

"(b) EQUALIZED SPENDING.—Nothing in this title shall be construed to mandate equalized spending per pupil for a State, local educational agency, or school.

"(c) BUILDING STANDARDS.—Nothing in this title shall be construed to mandate national school building standards for a State, local educational agency, or school.

"TITLE II—DWIGHT D. EISENHOWER PROFESSIONAL DEVELOPMENT PROGRAM

20 USC 6601

"SEC. 2001. FINDINGS.

"The Congress finds as follows:

"(1) Reaching the National Education Goals, particularly the third, fourth, and fifth National Education Goals, requires a comprehensive educational reform strategy that involves parents, schools, government, communities, and other public and private organizations at all levels.

"(2) A crucial component of the strategy for achieving such goals is ensuring, through sustained and intensive high-quality professional development, that all teachers will provide challenging learning experiences in the core academic subjects for their students.

"(3) Decisionmaking as to what activities a State or local educational agency should undertake to improve teaching and learning are best made by individuals in the schools closest to the classroom and most knowledgeable about the needs of schools and students.

"(4) The potential positive impact of high-quality professional development is underscored by recent research findings that—

"(A) professional development must be focused on teaching and learning in order to improve the opportunities of all students to achieve higher standards;

"(B) effective professional development focuses on discipline-based knowledge and effective subject-specific pedagogical skills, involves teams of teachers, and, where appropriate, administrators and pupil services personnel, in a school and, through professional networks of teachers, and, where appropriate, teacher educators, administrators, pupil services personnel, and parents, is interactive and collaborative, motivates by its intrinsic content and relationship to practice, builds on experience and learning-by-doing, and becomes incorporated into the everyday life of the school;

"(C) professional development can dramatically improve classroom instruction and learning when teachers, and, where appropriate, administrators, pupil services personnel, and parents, are partners in the development and implementation of such professional development; and

"(D) new and innovative strategies for teaching to high standards will require time for teachers, outside of the time spent teaching, for instruction, practice, and collegial collaboration.

"(5) Special attention must be given in professional development activities to ensure that education professionals are knowledgeable of, and make use of, strategies for serving populations that historically have lacked access to equal opportunities for advanced learning and career advancement.

"(6) Professional development is often a victim of budget reductions in fiscally difficult times.

"(7) The Federal Government has a vital role in helping States and local educational agencies to make sustained and intensive high-quality professional development in the core academic subjects become an integral part of the elementary and secondary education system.

"(8) Professional development activities must prepare teachers, pupil services personnel, paraprofessionals and other staff in the collaborative skills needed to appropriately teach children with disabilities, in the core academic subjects.

"(9) Parental involvement is an important aspect of school reform and improvement. There is a need for special attention to ensure the effective involvement of parents in the education of their children. Professional development should include methods and strategies to better prepare teachers and, where appropriate, administrators, to enable parents to participate fully and effectively in their children's education.

"SEC. 2002. PURPOSES.

20 USC 6602

"The purposes of this title are to provide assistance to State and local educational agencies and to institutions of higher education with teacher education programs so that such agencies and institutions can determine how best to improve the teaching and learning of all students by—

"(1) helping to ensure that teachers, and, where appropriate, other staff and administrators, have access to sustained and intensive high-quality professional development that is aligned to challenging State content standards and challenging

"TITLE XIV—GENERAL PROVISIONS**"PART A—DEFINITIONS****"SEC. 14101. DEFINITIONS.**

20 USC 8801.

"Except as otherwise provided, for the purposes of this Act, the following terms have the following meanings:

"(1) AVERAGE DAILY ATTENDANCE.—(A) Except as provided otherwise by State law or this paragraph, the term 'average daily attendance' means—

"(i) the aggregate number of days of attendance of all students during a school year; divided by

"(ii) the number of days school is in session during such school year.

"(B) The Secretary shall permit the conversion of average daily membership (or other similar data) to average daily attendance for local educational agencies in States that provide State aid to local educational agencies on the basis of average daily membership or such other data.

"(C) If the local educational agency in which a child resides makes a tuition or other payment for the free public education of the child in a school located in another school district, the Secretary shall, for purposes of this Act—

"(i) consider the child to be in attendance at a school of the agency making such payment; and

"(ii) not consider the child to be in attendance at a school of the agency receiving such payment.

"(D) If a local educational agency makes a tuition payment to a private school or to a public school of another local educational agency for a child with disabilities, as defined in section 602(a)(1) of the Individuals with Disabilities Education Act, the Secretary shall, for the purposes of this Act, consider such child to be in attendance at a school of the agency making such payment.

"(2) AVERAGE PER-PUPIL EXPENDITURE.—The term 'average per-pupil expenditure' means, in the case of a State or of the United States—

"(A) without regard to the source of funds—

"(i) the aggregate current expenditures, during the third fiscal year preceding the fiscal year for which the determination is made (or, if satisfactory data for that year are not available, during the most recent preceding fiscal year for which satisfactory data are available) of all local educational agencies in the State or, in the case of the United States for all States (which, for the purpose of this paragraph, means the 50 States and the District of Columbia); plus

"(ii) any direct current expenditures by the State for the operation of such agencies; divided by

"(B) the aggregate number of children in average daily attendance to whom such agencies provided free public education during such preceding year.

"(3) CHILD.—The term 'child' means any person within the age limits for which the State provides free public education.

"(4) COMMUNITY-BASED ORGANIZATION.—The term 'community-based organization' means a public or private nonprofit organization of demonstrated effectiveness that—

"(A) is representative of a community or significant segments of a community; and

"(B) provides educational or related services to individuals in the community.

"(5) CONSOLIDATED LOCAL APPLICATION.—The term 'consolidated local application' means an application submitted by a local educational agency pursuant to section 14302.

"(6) CONSOLIDATED LOCAL PLAN.—The term 'consolidated local plan' means a plan submitted by a local educational agency pursuant to section 14302.

"(7) CONSOLIDATED STATE APPLICATION.—The term 'consolidated State application' means an application submitted by a State educational agency pursuant to section 14302.

"(8) CONSOLIDATED STATE PLAN.—The term 'consolidated State plan' means a plan submitted by a State educational agency pursuant to section 14302.

"(9) COUNTY.—The term 'county' means one of the divisions of a State used by the Secretary of Commerce in compiling and reporting data regarding counties.

"(10) COVERED PROGRAM.—The term 'covered program' means each of the programs authorized by—

"(A) part A of title I;

"(B) part C of title I;

"(C) title II (other than section 2103 and part C);

"(D) subpart 2 of part A of title III;

"(E) part A of title IV (other than section 4114); and

"(F) title VI.

"(11) The term 'current expenditures' means expenditures for free public education—

"(A) including expenditures for administration, instruction, attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities; but

"(B) not including expenditures for community services, capital outlay, and debt service, or any expenditures made from funds received under title I and title VI.

"(12) DEPARTMENT.—The term 'Department' means the Department of Education.

"(13) EDUCATIONAL SERVICE AGENCY.—The term 'educational service agency' means a regional public multiservice agency authorized by State statute to develop, manage, and provide services or programs to local educational agencies.

"(14) ELEMENTARY SCHOOL.—The term 'elementary school' means a nonprofit institutional day or residential school that provides elementary education, as determined under State law.

"(15) FREE PUBLIC EDUCATION.—The term 'free public education' means education that is provided—

"(A) at public expense, under public supervision and direction, and without tuition charge; and

"(B) as elementary or secondary school education as determined under applicable State law, except that such

term does not include any education provided beyond grade 12.

"(16) GIFTED AND TALENTED.—The term 'gifted and talented', when used with respect to students, children or youth, means students, children or youth who give evidence of high performance capability in areas such as intellectual, creative, artistic, or leadership capacity, or in specific academic fields, and who require services or activities not ordinarily provided by the school in order to fully develop such capabilities.

"(17) INSTITUTION OF HIGHER EDUCATION.—The term 'institution of higher education' has the meaning given that term in section 1201(a) of the Higher Education Act of 1965.

"(18) LOCAL EDUCATIONAL AGENCY.—(A) The term 'local educational agency' means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools.

"(B) The term includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

"(C) The term includes an elementary or secondary school funded by the Bureau of Indian Affairs but only to the extent that such inclusion makes such school eligible for programs for which specific eligibility is not provided to such school in another provision of law and such school does not have a student population that is smaller than the student population of the local educational agency receiving assistance under this Act with the smallest student population, except that such school shall not be subject to the jurisdiction of any State educational agency other than the Bureau of Indian Affairs.

"(19) MENTORING.—The term 'mentoring' means a program in which an adult works with a child or youth on a 1-to-1 basis, establishing a supportive relationship, providing academic assistance, and introducing the child or youth to new experiences that enhance the child or youth's ability to excel in school and become a responsible citizen.

"(20) OTHER STAFF.—The term 'other staff' means pupil services personnel, librarians, career guidance and counseling personnel, education aides, and other instructional and administrative personnel.

"(21) OUTLYING AREA.—The term 'outlying area' means the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and for the purpose of section 1121 and any other discretionary grant program under this Act, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

"(22) PARENT.—The term 'parent' includes a legal guardian or other person standing in loco parentis.

"(23) PUBLIC TELECOMMUNICATION ENTITY.—The term 'public telecommunication entity' has the same meaning given to such term in section 397(12) of the Communications Act of 1934.

"(24) PUPIL SERVICES PERSONNEL; PUPIL SERVICES.—(A) The term 'pupil services personnel' means school counselors, school social workers, school psychologists, and other qualified professional personnel involved in providing assessment, diagnosis, counseling, educational, therapeutic, and other necessary services (including related services as such term is defined in section 602(a)(17) of the Individuals with Disabilities Education Act) as part of a comprehensive program to meet student needs.

"(B) The term 'pupil services' means the services provided by pupil services personnel.

"(25) SECONDARY SCHOOL.—The term 'secondary school' means a nonprofit institutional day or residential school that provides secondary education, as determined under State law, except that such term does not include any education beyond grade 12.

"(26) SECRETARY.—The term 'Secretary' means the Secretary of Education.

"(27) STATE.—The term 'State' means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas.

"(28) STATE EDUCATIONAL AGENCY.—The term 'State educational agency' means the agency primarily responsible for the State supervision of public elementary and secondary schools.

"(29) TECHNOLOGY.—The term 'technology' means the latest state-of-the-art technology products and services, such as closed circuit television systems, educational television or radio programs and services, cable television, satellite, copper fiber optic transmission, computer hardware and software, video and audio laser and CD-ROM disks, video and audio tapes, including interactive forms of such products and services, or other technologies.

20 USC 8802.

"SEC. 14102. APPLICABILITY OF THIS TITLE.

"Parts B, C, D, E, and F of this title do not apply to title VIII of this Act.

20 USC 8803.

"SEC. 14103. APPLICABILITY TO BUREAU OF INDIAN AFFAIRS OPERATED SCHOOLS.

"For purposes of any competitive program under this Act, a consortia of schools operated by the Bureau of Indian Affairs, a school operated under a contract or grant with the Bureau of Indian Affairs in consortia with another contract or grant school or tribal or community organization, or a Bureau of Indian Affairs school in consortia with an institution of higher education, a contract or grant school and tribal or community organization shall be given the same consideration as a local educational agency.

"PART B—FLEXIBILITY IN THE USE OF ADMINISTRATIVE AND OTHER FUNDS

20 USC 8821.

"SEC. 14201. CONSOLIDATION OF STATE ADMINISTRATIVE FUNDS FOR ELEMENTARY AND SECONDARY EDUCATION PROGRAMS.

"(a) CONSOLIDATION OF ADMINISTRATIVE FUNDS.—

"(1) IN GENERAL.—A State educational agency may consolidate the amounts specifically made available to such agency for State administration under one or more of the programs

specified under paragraph (2) if such State educational agency can demonstrate that the majority of such agency's resources come from non-Federal sources.

"(2) APPLICABILITY.—This section applies to programs under title I, those covered programs described in subparagraphs (C), (D), (E), and (F) of section 14101(10), and administrative funds under section 308(c) of the Goals 2000: Educate America Act.

"(b) USE OF FUNDS.—

"(1) IN GENERAL.—A State educational agency shall use the amount available under this section for the administration of the programs included in the consolidation under subsection (a).

"(2) ADDITIONAL USES.—A State educational agency may also use funds available under this section for administrative activities designed to enhance the effective and coordinated use of funds under the programs included in the consolidation under subsection (a), such as—

"(A) the coordination of such programs with other Federal and non-Federal programs;

"(B) the establishment and operation of peer-review mechanisms under this Act;

"(C) the administration of this title;

"(D) the dissemination of information regarding model programs and practices; and

"(E) technical assistance under programs specified in subsection (a)(2).

"(c) RECORDS.—A State educational agency that consolidates administrative funds under this section shall not be required to keep separate records, by individual program, to account for costs relating to the administration of programs included in the consolidation under subsection (a).

"(d) REVIEW.—To determine the effectiveness of State administration under this section, the Secretary may periodically review the performance of State educational agencies in using consolidated administrative funds under this section and take such steps as the Secretary finds appropriate to ensure the effectiveness of such administration.

"(e) UNUSED ADMINISTRATIVE FUNDS.—If a State educational agency does not use all of the funds available to such agency under this section for administration, such agency may use such funds during the applicable period of availability as funds available under one or more programs included in the consolidation under subsection (a).

"(f) CONSOLIDATION OF FUNDS FOR STANDARDS AND ASSESSMENT DEVELOPMENT.—In order to develop challenging State standards and assessments, a State educational agency may consolidate the amounts made available to such agency for such purposes under title I of this Act and title III of the Goals 2000: Educate America Act.

"SEC. 14202. SINGLE LOCAL EDUCATIONAL AGENCY STATES.

20 USC 8822.

"A State educational agency that also serves as a local educational agency, in such agency's applications or plans under this Act, shall describe how such agency will eliminate duplication in the conduct of administrative functions.

20 USC 8823.

"SEC. 14203. CONSOLIDATION OF FUNDS FOR LOCAL ADMINISTRATION.

"(a) GENERAL AUTHORITY.—In accordance with regulations of the Secretary, a local educational agency, with the approval of its State educational agency, may consolidate and use for the administration of one or more covered programs for any fiscal year not more than the percentage, established in each covered program, of the total amount available to the local educational agency under such covered programs.

"(b) STATE PROCEDURES.—Within one year from the date of enactment of the Improving America's Schools Act of 1994, a State educational agency shall, in collaboration with local educational agencies in the State, establish procedures for responding to requests from local educational agencies to consolidate administrative funds under subsection (a) and for establishing limitations on the amount of funds under covered programs that may be used for administration on a consolidated basis.

"(c) CONDITIONS.—A local educational agency that consolidates administrative funds under this section for any fiscal year shall not use any other funds under the programs included in the consolidation for administration for that fiscal year.

"(d) USES OF ADMINISTRATIVE FUNDS.—A local educational agency that consolidates administrative funds under this section may use such consolidated funds for the administration of covered programs and for the uses described in section 14201(b)(2).

"(e) RECORDS.—A local educational agency that consolidates administrative funds under this section shall not be required to keep separate records, by individual covered program, to account for costs relating to the administration of covered programs included in the consolidation.

20 USC 8824.

"SEC. 14204. ADMINISTRATIVE FUNDS STUDIES.

"(a) FEDERAL FUNDS STUDY.—

"(1) IN GENERAL.—The Secretary shall conduct a study of the use of funds under this Act for the administration, by State and local educational agencies, of all covered programs, including the percentage of grant funds used for such purpose in all covered programs.

"(2) STATE DATA.—Beginning in fiscal year 1995 and each succeeding fiscal year thereafter, each State educational agency which receives funds under title I shall submit to the Secretary a report on the use of title I funds for the State administration of activities assisted under title I. Such report shall include the proportion of State administrative funds provided under section 1603 that are expended for—

"(A) basic program operation and compliance monitoring;

"(B) statewide program services such as development of standards and assessments, curriculum development, and program evaluation; and

"(C) technical assistance and other direct support to local educational agencies and schools.

"(3) FEDERAL FUNDS REPORT.—The Secretary shall complete the study conducted under this section not later than July 1, 1997, and shall submit to the President and the appropriate committees of the Congress a report regarding such study within 30 days of the completion of such study.

Effective date.
Reports.

"(4) RESULTS.—Based on the results of the study described in subsection (a)(1), which may include collection and analysis of the data under paragraph (2) and section 410(b) of the Improving America's Schools Act of 1994, the Secretary shall—

"(A) develop a definition of what types of activities constitute the administration of programs under this Act by State and local educational agencies; and

"(B) within one year of the completion of such study, promulgate final regulations or guidelines regarding the use of funds for administration under all programs, including the use of such funds on a consolidated basis and limitations on the amount of such funds that may be used for administration where such limitation is not otherwise specified in law.

Regulations.

"(b) GENERAL ADMINISTRATIVE FUNDS STUDY AND REPORT.—Upon the date of completion of the pilot model data system described in section 410(b) of the Improving America's Schools Act of 1994, the Secretary shall study the information obtained through the use of such data system and other relevant information, as well as any other data systems which are in use on such date that account for administrative expenses at the school, local educational agency, and State educational agency level, and shall report to the Congress not later than July 1, 1997, regarding—

"(1) the potential for the reduction of administrative expenses at the school, local educational agency, and State educational agency levels;

"(2) the potential usefulness of such data system to reduce such administrative expenses;

"(3) any other methods which may be employed by schools, local educational agencies or State educational agencies to reduce administrative expenses and maximize the use of funds for functions directly affecting student learning; and

"(4) if appropriate, steps which may be taken to assist schools, local educational agencies and State educational agencies to account for and reduce administrative expenses.

"SEC. 14205. CONSOLIDATED SET-ASIDE FOR DEPARTMENT OF THE INTERIOR FUNDS. 20 USC 8825.

"(a) GENERAL AUTHORITY.—

"(1) TRANSFER.—The Secretary shall transfer to the Department of the Interior, as a consolidated amount for covered programs, the Indian education programs under part A of title IX of this Act, and the education for homeless children and youth program under subtitle B of title VII of the Stewart B. McKinney Homeless Assistance Act, the amounts allotted to the Department of the Interior under those programs.

"(2) AGREEMENT.—(A) The Secretary and the Secretary of the Interior shall enter into an agreement, consistent with the requirements of the programs specified in paragraph (1), for the distribution and use of those program funds under terms that the Secretary determines best meet the purposes of those programs.

"(B) The agreement shall—

"(i) set forth the plans of the Secretary of the Interior for the use of the amount transferred, the steps to be taken to achieve the National Education Goals, and

performance measures to assess program effectiveness, including measurable goals and objectives; and

“(ii) be developed in consultation with Indian tribes.

“(b) ADMINISTRATION.—The Department of the Interior may use not more than 1.5 percent of the funds consolidated under this section for such department's costs related to the administration of the funds transferred under this section.

20 USC 8826.

“SEC. 14206. AVAILABILITY OF UNNEEDED PROGRAM FUNDS.

“(a) UNNEEDED PROGRAM FUNDS.—With the approval of its State educational agency, a local educational agency that determines for any fiscal year that funds under a covered program (other than part A of title I) are not needed for the purpose of that covered program, may use such funds, not to exceed five percent of the total amount of such local educational agency's funds under that covered program, for the purpose of another covered program.

“(b) COORDINATION OF SERVICES.—A local educational agency, individual school, or consortium of schools may use a total of not more than five percent of the funds such agency, school, or consortium, respectively, receives under this Act for the establishment and implementation of a coordinated services project in accordance with the requirements of title XI of this Act.

**“PART C—COORDINATION OF PROGRAMS;
CONSOLIDATED STATE AND LOCAL PLANS
AND APPLICATIONS**

20 USC 8851.

“SEC. 14301. PURPOSE.

“It is the purpose of this part to improve teaching and learning by encouraging greater cross-program coordination, planning, and service delivery under this Act and enhanced integration of programs under this Act with educational activities carried out with State and local funds.

20 USC 8852.

“SEC. 14302. OPTIONAL CONSOLIDATED STATE PLANS OR APPLICATIONS.

“(a) GENERAL AUTHORITY.—

“(1) SIMPLIFICATION.—In order to simplify application requirements and reduce the burden for State educational agencies under this Act, the Secretary, in accordance with subsection (b), shall establish procedures and criteria under which a State educational agency may submit a consolidated State plan or a consolidated State application meeting the requirements of this section for—

“(A) each of the covered programs in which the State participates; and

“(B) the additional programs described in paragraph (2).

“(2) ADDITIONAL PROGRAMS.—A State educational agency may also include in its consolidated State plan or consolidated State application—

“(A) the Even Start program under part B of title I;

“(B) the Prevention and Intervention Programs for Youth Who Are Neglected, Delinquent, or At-Risk of Dropping Out under part D of title I;

“(C) programs under part A of title II of the Carl D. Perkins Vocational and Applied Technology Education Act;

“(D) programs under the Goals 2000: Educate America Act;

“(E) programs under the School-to-Work Opportunities Act of 1994; and

“(F) such other programs as the Secretary may designate.

“(3) CONSOLIDATED APPLICATIONS AND PLANS.—A State educational agency that submits a consolidated State plan or a consolidated State application under this section shall not be required to submit separate State plans or applications under any of the programs to which the consolidated State plan or consolidated State application under this section applies.

“(b) COLLABORATION.—

“(1) IN GENERAL.—In establishing criteria and procedures under this section, the Secretary shall collaborate with State educational agencies and, as appropriate, with other State agencies, local educational agencies, public and private nonprofit agencies, organizations, and institutions, private schools, and representatives of parents, students, and teachers.

“(2) CONTENTS.—Through the collaborative process described in subsection (b)(1), the Secretary shall establish, for each program under the Act to which this section applies, the descriptions, information, assurances, and other material required to be included in a consolidated State plan or consolidated State application.

“(3) NECESSARY MATERIALS.—The Secretary shall require only descriptions, information, assurances, and other materials that are absolutely necessary for the consideration of the consolidated State plan or consolidated State application.

“SEC. 14303. GENERAL APPLICABILITY OF STATE EDUCATIONAL AGENCY ASSURANCES. 20 USC 8853.

“(a) ASSURANCES.—A State educational agency that submits a consolidated State plan or consolidated State application under this Act, whether separately or under section 14302, shall have on file with the Secretary a single set of assurances, applicable to each program for which such plan or application is submitted, that provides that—

“(1) each such program will be administered in accordance with all applicable statutes, regulations, program plans, and applications;

“(2)(A) the control of funds provided under each such program and title to property acquired with program funds will be in a public agency, in a nonprofit private agency, institution, or organization, or in an Indian tribe if the law authorizing the program provides for assistance to such entities; and

“(B) the public agency, nonprofit private agency, institution, or organization, or Indian tribe will administer such funds and property to the extent required by the authorizing law;

“(3) the State will adopt and use proper methods of administering each such program, including—

“(A) the enforcement of any obligations imposed by law on agencies, institutions, organizations, and other recipients responsible for carrying out each program;

"(B) the correction of deficiencies in program operations that are identified through audits, monitoring, or evaluation; and

"(C) the adoption of written procedures for the receipt and resolution of complaints alleging violations of law in the administration of such programs;

"(4) the State will cooperate in carrying out any evaluation of each such program conducted by or for the Secretary or other Federal officials;

"(5) the State will use such fiscal control and fund accounting procedures as will ensure proper disbursement of, and accounting for, Federal funds paid to the State under each such program;

"(6) the State will—

Reports.

"(A) make reports to the Secretary as may be necessary to enable the Secretary to perform the Secretary's duties under each such program; and

Records.

"(B) maintain such records, provide such information to the Secretary, and afford access to the records as the Secretary may find necessary to carry out the Secretary's duties; and

"(7) before the plan or application was submitted to the Secretary, the State has afforded a reasonable opportunity for public comment on the plan or application and has considered such comment.

"(b) GEPA PROVISION.—Section 441 of the General Education Provisions Act shall not apply to programs under this Act.

20 USC 8854.

"SEC. 14304. ADDITIONAL COORDINATION.

"(a) ADDITIONAL COORDINATION.—In order to explore ways for State educational agencies to reduce administrative burdens and promote the coordination of the education services of this Act with other health and social service programs administered by such agencies, the Secretary is directed to seek agreements with other Federal agencies (including the Departments of Health and Human Services, Justice, Labor and Agriculture) for the purpose of establishing procedures and criteria under which a State educational agency would submit a consolidated State plan or consolidated State application that meets the requirements of the covered programs.

"(b) REPORT.—The Secretary shall report to the relevant committees 6 months after the date of enactment of the Improving America's Schools Act of 1994.

20 USC 8855.

"SEC. 14305. CONSOLIDATED LOCAL PLANS OR APPLICATIONS.

"(a) GENERAL AUTHORITY.—A local educational agency receiving funds under more than one covered program may submit plans or applications to the State educational agency under such programs on a consolidated basis.

"(b) REQUIRED CONSOLIDATED PLANS OR APPLICATIONS.—A State educational agency that has submitted and had approved a consolidated State plan or application under section 14302 may require local educational agencies in the State receiving funds under more than one program included in the consolidated State plan or consolidated State application to submit consolidated local plans or applications under such programs.

"(c) COLLABORATION.—A State educational agency shall collaborate with local educational agencies in the State in establishing

procedures for the submission of the consolidated State plans or consolidated State applications under this section.

"(d) NECESSARY MATERIALS.—The State educational agency shall require only descriptions, information, assurances, and other material that are absolutely necessary for the consideration of the local educational agency plan or application.

"SEC. 14306. OTHER GENERAL ASSURANCES.

20 USC 8856.

"(a) ASSURANCES.—Any applicant other than a State educational agency that submits a plan or application under this Act, whether separately or pursuant to section 14304, shall have on file with the State educational agency a single set of assurances, applicable to each program for which a plan or application is submitted, that provides that—

"(1) each such program will be administered in accordance with all applicable statutes, regulations, program plans, and applications;

"(2)(A) the control of funds provided under each such program and title to property acquired with program funds will be in a public agency or in a nonprofit private agency, institution, organization, or Indian tribe, if the law authorizing the program provides for assistance to such entities; and

"(B) the public agency, nonprofit private agency, institution, or organization, or Indian tribe will administer such funds and property to the extent required by the authorizing statutes;

"(3) the applicant will adopt and use proper methods of administering each such program, including—

"(A) the enforcement of any obligations imposed by law on agencies, institutions, organizations, and other recipients responsible for carrying out each program; and

"(B) the correction of deficiencies in program operations that are identified through audits, monitoring, or evaluation;

"(4) the applicant will cooperate in carrying out any evaluation of each such program conducted by or for the State educational agency, the Secretary or other Federal officials;

"(5) the applicant will use such fiscal control and fund accounting procedures as will ensure proper disbursement of, and accounting for, Federal funds paid to such applicant under each such program;

"(6) the applicant will—

"(A) make reports to the State educational agency and the Secretary as may be necessary to enable such agency and the Secretary to perform their duties under each such program; and

Reports.

"(B) maintain such records, provide such information, and afford access to the records as the State educational agency or the Secretary may find necessary to carry out the State educational agency's or the Secretary's duties; and

Records.

"(7) before the application was submitted, the applicant afforded a reasonable opportunity for public comment on the application and has considered such comment.

"(b) GEPA PROVISION.—Section 442 of the General Education Provisions Act does not apply to programs under this Act.

"SEC. 14307. RELATIONSHIP OF STATE AND LOCAL PLANS TO PLANS UNDER THE GOALS 2000: EDUCATE AMERICA ACT.

"(a) STATE PLANS.—

"(1) IN GENERAL.—Each State plan submitted under the following programs shall be integrated with each other and the State's improvement plan, if any, either approved or being developed, under title III of the Goals 2000: Educate America Act, the School-to-Work Opportunities Act of 1994, and the Carl D. Perkins Vocational and Applied Technology Education Act:

"(A) Part A of title I (helping disadvantaged children meet high standards).

"(B) Part C of title I (education of migratory children).

"(C) Part D of title I (education of neglected, delinquent, and at-risk youth).

"(D) Title II (professional development).

"(E) Title IV (safe and drug-free schools).

"(F) Title VI (innovative education program strategies).

"(G) Subpart 4 of part A of title IX (Indian education).

"(2) SPECIAL RULE.—Notwithstanding any other provision of this Act, if a requirement relating to a State plan referred to in paragraph (1) is already satisfied by the approved State improvement plan for such State under title III of the Goals 2000: Educate America Act, the State plan referred to in paragraph (1) need not separately address that requirement.

"(3) AMENDMENT.—Any State plan referred to in paragraph (1) may, if necessary, be submitted as an amendment to the State improvement plan for such State under title III of the Goals 2000: Educate America Act.

"(b) LOCAL PLANS.—

"(1) IN GENERAL.—Each local educational agency plan submitted under the following programs shall be integrated with each other and its local improvement plan, if any, either approved or being developed, under title III of the Goals 2000: Educate America Act:

"(A) Part A of title I (helping disadvantaged children meet high standards).

"(B) Title II (professional development).

"(C) Title IV (safe and drug-free schools).

"(D) Subpart 4 of part A of title IX (Indian education).

"(E) Subpart 1 of part A of title VII (bilingual education).

"(F) Title VI (innovative education program strategies).

"(G) Part C of title VII (emergency immigrant education).

"(2) PLAN OF OPERATION.—Each plan of operation included in an application submitted by an eligible entity under part B of title I (Even Start) shall be consistent with, and promote the goals of, the State and local improvement plans, either approved or being developed, under title III of the Goals 2000: Educate America Act or, if those plans are not approved or being developed, with the State and local plans under sections 1111 and 1112.

"(3) SPECIAL RULE.—Notwithstanding any other provision of this Act, if a requirement relating to a local plan referred to in paragraph (1) is already satisfied by the local educational agency's approved local improvement plan under title III of

the Goals 2000: Educate America Act, the local plan referred to in paragraph (1) need not separately address that requirement.

"(4) SUBMISSION.—Any local plan referred to in paragraph (1) may, if necessary, be submitted as an amendment to the local educational agency's improvement plan under title III of the Goals 2000: Educate America Act.

"PART D—WAIVERS

"SEC. 14401. WAIVERS OF STATUTORY AND REGULATORY REQUIREMENTS. 20 USC 8881.

"(a) IN GENERAL.—Except as provided in subsection (c), the Secretary may waive any statutory or regulatory requirement of this Act for a State educational agency, local educational agency, Indian tribe, or school through a local educational agency, that—

"(1) receives funds under a program authorized by this Act; and

"(2) requests a waiver under subsection (b).

"(b) REQUEST FOR WAIVER.—

"(1) IN GENERAL.—A State educational agency, local educational agency, or Indian tribe which desires a waiver shall submit a waiver request to the Secretary that—

"(A) identifies the Federal programs affected by such requested waiver;

"(B) describes which Federal requirements are to be waived and how the waiving of such requirements will—

"(i) increase the quality of instruction for students;

or

"(ii) improve the academic performance of students;

"(C) if applicable, describes which similar State and local requirements will be waived and how the waiving of such requirements will assist the local educational agencies, Indian tribes or schools, as appropriate, to achieve the objectives described in clauses (i) and (ii) of subparagraph (B);

"(D) describes specific, measurable educational improvement goals and expected outcomes for all affected students;

"(E) describes the methods to be used to measure progress in meeting such goals and outcomes; and

"(F) describes how schools will continue to provide assistance to the same populations served by programs for which waivers are requested.

"(2) ADDITIONAL INFORMATION.—Such requests—

"(A) may provide for waivers of requirements applicable to State educational agencies, local educational agencies, Indian tribes, and schools; and

"(B) shall be developed and submitted—

"(i)(I) by local educational agencies (on behalf of such agencies and schools) to State educational agencies; and

"(II) by State educational agencies (on behalf of, and based upon the requests of, local educational agencies) to the Secretary; or

"(ii) by Indian tribes (on behalf of schools operated by such tribes) to the Secretary.

"(3) GENERAL REQUIREMENTS.—(A) In the case of a waiver request submitted by a State educational agency acting in its own behalf, the State educational agency shall—

Public
information.

"(i) provide all interested local educational agencies in the State with notice and a reasonable opportunity to comment on the request;

"(ii) submit the comments to the Secretary; and

"(iii) provide notice and information to the public regarding the waiver request in the manner that the applying agency customarily provides similar notices and information to the public.

"(B) In the case of a waiver request submitted by a local educational agency that receives funds under this Act—

Public
information.

"(i) such request shall be reviewed by the State educational agency and be accompanied by the comments, if any, of such State educational agency; and

"(ii) notice and information regarding the waiver request shall be provided to the public by the agency requesting the waiver in the manner that such agency customarily provides similar notices and information to the public.

"(c) RESTRICTIONS.—The Secretary shall not waive under this section any statutory or regulatory requirements relating to—

"(1) the allocation or distribution of funds to States, local educational agencies, or other recipients of funds under this Act;

"(2) maintenance of effort;

"(3) comparability of services;

"(4) use of Federal funds to supplement, not supplant, non-Federal funds;

"(5) equitable participation of private school students and teachers;

"(6) parental participation and involvement;

"(7) applicable civil rights requirements;

"(8) the requirement for a charter school under part C of title X; or

"(9) the prohibitions regarding—

"(A) State aid in section 14502; or

"(B) use of funds for religious worship or instruction in section 14507.

"(d) DURATION AND EXTENSION OF WAIVER.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the duration of a waiver approved by the Secretary under this section may be for a period not to exceed three years.

"(2) EXTENSION.—The Secretary may extend the period described in paragraph (1) if the Secretary determines that—

"(A) the waiver has been effective in enabling the State or affected recipients to carry out the activities for which the waiver was requested and the waiver has contributed to improved student performance; and

"(B) such extension is in the public interest.

"(e) REPORTS.—

"(1) LOCAL WAIVER.—A local educational agency that receives a waiver under this section shall at the end of the second year for which a waiver is received under this section, and each subsequent year, submit a report to the State educational agency that—

"(A) describes the uses of such waiver by such agency or by schools;

"(B) describes how schools continued to provide assistance to the same populations served by the programs for which waivers are requested; and

"(C) evaluates the progress of such agency and of schools in improving the quality of instruction or the academic performance of students.

"(2) STATE WAIVER.—A State educational agency that receives reports required under paragraph (1) shall annually submit a report to the Secretary that is based on such reports and contains such information as the Secretary may require.

"(3) INDIAN TRIBE WAIVER.—An Indian tribe that receives a waiver under this section shall annually submit a report to the Secretary that—

"(A) describes the uses of such waiver by schools operated by such tribe; and

"(B) evaluates the progress of such schools in improving the quality of instruction or the academic performance of students.

"(4) REPORT TO CONGRESS.—Beginning in fiscal year 1997 and each subsequent year, the Secretary shall submit to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate a report—

"(A) summarizing the uses of waivers by State educational agencies, local educational agencies, Indian tribes, and schools; and

"(B) describing whether such waivers—

"(i) increased the quality of instruction to students;

or

"(ii) improved the academic performance of students.

"(f) TERMINATION OF WAIVERS.—The Secretary shall terminate a waiver under this section if the Secretary determines that the performance of the State or other recipient affected by the waiver has been inadequate to justify a continuation of the waiver or if the waiver is no longer necessary to achieve its original purposes.

"(g) PUBLICATION.—A notice of the Secretary's decision to grant each waiver under subsection (a) shall be published in the Federal Register and the Secretary shall provide for the dissemination of such notice to State educational agencies, interested parties, including educators, parents, students, advocacy and civil rights organizations, and the public.

Federal
Register,
publication.

"PART E—UNIFORM PROVISIONS

SEC. 14501. MAINTENANCE OF EFFORT.

20 USC 8891.

"(a) IN GENERAL.—A local educational agency may receive funds under a covered program for any fiscal year only if the State educational agency finds that either the combined fiscal effort per student or the aggregate expenditures of such agency and the State with respect to the provision of free public education by such agency for the preceding fiscal year was not less than 90 percent of such combined fiscal effort or aggregate expenditures for the second preceding fiscal year.

"(b) REDUCTION IN CASE OF FAILURE TO MEET.—

"(1) IN GENERAL.—The State educational agency shall reduce the amount of the allocation of funds under a covered program in any fiscal year in the exact proportion to which a local educational agency fails to meet the requirement of subsection (a) by falling below 90 percent of both the combined fiscal effort per student and aggregate expenditures (using the measure most favorable to such local agency).

"(2) SPECIAL RULE.—No such lesser amount shall be used for computing the effort required under subsection (a) for subsequent years.

"(c) WAIVER.—The Secretary may waive the requirements of this section if the Secretary determines that such a waiver would be equitable due to—

"(1) exceptional or uncontrollable circumstances such as a natural disaster; or

"(2) a precipitous decline in the financial resources of the local educational agency.

20 USC 8892.

"SEC. 14502. PROHIBITION REGARDING STATE AID.

"A State shall not take into consideration payments under this Act (other than under title VIII) in determining the eligibility of any local educational agency in such State for State aid, or the amount of State aid, with respect to free public education of children.

20 USC 8893.

"SEC. 14503. PARTICIPATION BY PRIVATE SCHOOL CHILDREN AND TEACHERS.

"(a) PRIVATE SCHOOL PARTICIPATION.—

"(1) IN GENERAL.—Except as otherwise provided in this Act, to the extent consistent with the number of eligible children in a State educational agency, local educational agency, or educational service agency or consortium of such agencies receiving financial assistance under a program specified in subsection (b), who are enrolled in private elementary and secondary schools in such agency or consortium, such agency or consortium shall, after timely and meaningful consultation with appropriate private school officials, provide such children and their teachers or other educational personnel, on an equitable basis, special educational services or other benefits under such program.

"(2) SECULAR, NEUTRAL, AND NONIDEOLOGICAL SERVICES OR BENEFITS.—Educational services or other benefits, including materials and equipment, provided under this section, shall be secular, neutral, and nonideological.

"(3) SPECIAL RULE.—Educational services and other benefits provided under this section for such private school children, teachers, and other educational personnel shall be equitable in comparison to services and other benefits for public school children, teachers, and other educational personnel participating in such program.

"(4) EXPENDITURES.—Expenditures for educational services and other benefits provided under this section to eligible private school children, their teachers, and other educational personnel serving such children shall be equal, taking into account the number and educational needs of the children to be served, to the expenditures for participating public school children.

"(5) PROVISION OF SERVICES.—Such agency or consortium described in subsection (a)(1) may provide such services directly

or through contracts with public and private agencies, organizations, and institutions.

"(b) APPLICABILITY.—

"(1) IN GENERAL.—This section applies to programs under—

"(A) part C of title I (migrant education);

"(B) title II (other than section 2103 and part C of such title);

"(C) title VII;

"(D) title III (other than part B of such title) (Star Schools); and

"(E) part A of title IV (other than section 4114).

"(2) DEFINITION.—For the purposes of this section, the term 'eligible children' means children eligible for services under a program described in paragraph (1).

"(c) CONSULTATION.—

"(1) IN GENERAL.—To ensure timely and meaningful consultation, a State educational agency, local educational agency, educational service agency or consortium of such agencies shall consult with appropriate private school officials during the design and development of the programs under this Act, on issues such as—

"(A) how the children's needs will be identified;

"(B) what services will be offered;

"(C) how and where the services will be provided; and

"(D) how the services will be assessed.

"(2) TIMING.—Such consultation shall occur before the agency or consortium makes any decision that affects the opportunities of eligible private school children, teachers, and other educational personnel to participate in programs under this Act.

"(3) DISCUSSION REQUIRED.—Such consultation shall include a discussion of service delivery mechanisms that the agency or consortium could use to provide equitable services to eligible private school children, teachers, administrators, and other staff.

"(d) PUBLIC CONTROL OF FUNDS.—

"(1) IN GENERAL.—The control of funds used to provide services under this section, and title to materials, equipment, and property purchased with such funds, shall be in a public agency for the uses and purposes provided in this Act, and a public agency shall administer such funds and property.

"(2) PROVISION OF SERVICES.—(A) The provision of services under this section shall be provided—

"(i) by employees of a public agency; or

"(ii) through contract by such public agency with an individual, association, agency, or organization. Contracts.

"(B) In the provision of such services, such employee, person, association, agency, or organization shall be independent of such private school and of any religious organization, and such employment or contract shall be under the control and supervision of such public agency.

"(C) Funds used to provide services under this section shall not be commingled with non-Federal funds.

"SEC. 14504. STANDARDS FOR BY-PASS.

20 USC 8894.

"If, by reason of any provision of law, a State educational agency, local educational agency, educational service agency or

consortium of such agencies is prohibited from providing for the participation in programs of children enrolled in, or teachers or other educational personnel from, private elementary and secondary schools, on an equitable basis, or if the Secretary determines that such agency or consortium has substantially failed or is unwilling to provide for such participation, as required by section 14503, the Secretary shall—

“(1) waive the requirements of that section for such agency or consortium; and

“(2) arrange for the provision of equitable services to such children, teachers, or other educational personnel through arrangements that shall be subject to the requirements of this section and of sections 14503, 14505, and 14506.

20 USC 8895.

“SEC. 14505. COMPLAINT PROCESS FOR PARTICIPATION OF PRIVATE SCHOOL CHILDREN.

“(a) **PROCEDURES FOR COMPLAINTS.**—The Secretary shall develop and implement written procedures for receiving, investigating, and resolving complaints from parents, teachers, or other individuals and organizations concerning violations of section 14503 by a State educational agency, local educational agency, educational service agency, or consortium of such agencies. Such individual or organization shall submit such complaint to the State educational agency for a written resolution by the State educational agency within a reasonable period of time.

“(b) **APPEALS TO THE SECRETARY.**—Such resolution may be appealed by an interested party to the Secretary not later than 30 days after the State educational agency resolves the complaint or fails to resolve the complaint within a reasonable period of time. Such appeal shall be accompanied by a copy of the State educational agency's resolution, and a complete statement of the reasons supporting the appeal. The Secretary shall investigate and resolve each such appeal not later than 120 days after receipt of the appeal.

20 USC 8896.

“SEC. 14506. BY-PASS DETERMINATION PROCESS.

“(a) **REVIEW.**—

“(1) **IN GENERAL.**—(A) The Secretary shall not take any final action under section 14504 until the State educational agency, local educational agency, educational service agency, or consortium of such agencies affected by such action has had an opportunity, for not less than 45 days after receiving written notice thereof, to submit written objections and to appear before the Secretary to show cause why that action should not be taken.

“(B) Pending final resolution of any investigation or complaint that could result in a determination under this section, the Secretary may withhold from the allocation of the affected State or local educational agency the amount estimated by the Secretary to be necessary to pay the cost of those services.

“(2) **PETITION FOR REVIEW.**—(A) If such affected agency or consortium is dissatisfied with the Secretary's final action after a proceeding under paragraph (1), such agency or consortium may, within 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action.

“(B) A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary.

"(C) The Secretary upon receipt of the copy of the petition shall file in the court the record of the proceedings on which the Secretary based this action, as provided in section 2112 of title 28, United States Code. Records.

"(3) FINDINGS OF FACT.—(A) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Secretary to take further evidence and the Secretary may then make new or modified findings of fact and may modify the Secretary's previous action, and shall file in the court the record of the further proceedings. Records.

"(B) Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

"(4) JURISDICTION.—(A) Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Secretary or to set such action aside, in whole or in part.

"(B) The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

"(b) DETERMINATION.—Any determination by the Secretary under this section shall continue in effect until the Secretary determines, in consultation with such agency or consortium and representatives of the affected private school children, teachers, or other educational personnel that there will no longer be any failure or inability on the part of such agency or consortium to meet the applicable requirements of section 14503 or any other provision of this Act.

"(c) PAYMENT FROM STATE ALLOTMENT.—When the Secretary arranges for services pursuant to this section, the Secretary shall, after consultation with the appropriate public and private school officials, pay the cost of such services, including the administrative costs of arranging for those services, from the appropriate allocation or allocations under this Act.

"(d) PRIOR DETERMINATION.—Any by-pass determination by the Secretary under this Act as in effect on the day preceding the date of enactment of the Improving America's Schools Act of 1994 shall remain in effect to the extent the Secretary determines that such determination is consistent with the purpose of this section.

"SEC. 14507. PROHIBITION AGAINST FUNDS FOR RELIGIOUS WORSHIP OR INSTRUCTION. 20 USC 8897.

"Nothing contained in this Act shall be construed to authorize the making of any payment under this Act for religious worship or instruction.

"SEC. 14508. APPLICABILITY TO HOME SCHOOLS. 20 USC 8898.

"Nothing in this Act shall be construed to affect home schools.

"SEC. 14509. GENERAL PROVISION REGARDING NONRECIPIENT NONPUBLIC SCHOOLS. 20 USC 8899.

"Nothing in this Act shall be construed to permit, allow, encourage, or authorize any Federal control over any aspect of any private, religious, or home school, whether or not a home school is treated as a private school or home school under State law. This section shall not be construed to bar private, religious, or home schools from participation in programs or services under this Act.

20 USC 8900.

"SEC. 14510. SCHOOL PRAYER.

"Any State or local educational agency that is adjudged by a Federal court of competent jurisdiction to have willfully violated a Federal court order mandating that such local educational agency remedy a violation of the constitutional right of any student with respect to prayer in public schools, in addition to any other judicial remedies, shall be ineligible to receive Federal funds under this Act until such time as the local educational agency complies with such order. Funds that are withheld under this section shall not be reimbursed for the period during which the local educational agency was in willful noncompliance.

20 USC 8901.

"SEC. 14511. GENERAL PROHIBITIONS.

"(a) PROHIBITION.—None of the funds authorized under this Act shall be used—

"(1) to develop or distribute materials, or operate programs or courses of instruction directed at youth that are designed to promote or encourage, sexual activity, whether homosexual or heterosexual;

"(2) to distribute or to aid in the distribution by any organization of legally obscene materials to minors on school grounds;

"(3) to provide sex education or HIV prevention education in schools unless such instruction is age appropriate and includes the health benefits of abstinence; or

"(4) to operate a program of condom distribution in schools.

"(b) LOCAL CONTROL.—Nothing in this section shall be construed to—

"(1) authorize an officer or employee of the Federal Government to mandate, direct, review, or control a State, local educational agency, or schools' instructional content, curriculum, and related activities;

"(2) limit the application of the General Education Provisions Act;

"(3) require the distribution of scientifically or medically false or inaccurate materials or to prohibit the distribution of scientifically or medically true or accurate materials; or

"(4) create any legally enforceable right.

20 USC 8902.

"SEC. 14512. PROHIBITION ON FEDERAL MANDATES, DIRECTION, AND CONTROL.

"Nothing in this Act shall be construed to authorize an officer or employee of the Federal Government to mandate, direct, or control a State, local educational agency, or school's curriculum, program of instruction, or allocation of State or local resources, or mandate a State or any subdivision thereof to spend any funds or incur any costs not paid for under this Act.

20 USC 8903.

"SEC. 14513. REPORT.

"The Secretary shall report to the Congress not later than 180 days after the date of enactment of the Improving America's Schools Act of 1994 regarding how the Secretary shall ensure that audits conducted by Department employees of activities assisted under this Act comply with changes to this Act made by the Improving America's Schools Act of 1994, particularly with respect to permitting children with similar educational needs to be served in the same educational settings, where appropriate.

"SEC. 14514. REQUIRED PARTICIPATION PROHIBITED.

20 USC 8904.

"Notwithstanding any other provision of law, no State shall be required to participate in any program under the Goals 2000: Educate America Act, or to have content standards or student performance standards approved or certified under such Act, in order to receive assistance under this Act.

"PART F—GUN POSSESSION**"SEC. 14601. GUN-FREE REQUIREMENTS.**

Gun-Free
Schools Act of
1994.
20 USC 8921.

"(a) **SHORT TITLE.**—This section may be cited as the 'Gun-Free Schools Act of 1994'.

"(b) **REQUIREMENTS.**—

"(1) **IN GENERAL.**—Except as provided in paragraph (3), each State receiving Federal funds under this Act shall have in effect a State law requiring local educational agencies to expel from school for a period of not less than one year a student who is determined to have brought a weapon to a school under the jurisdiction of local educational agencies in that State, except that such State law shall allow the chief administering officer of such local educational agency to modify such expulsion requirement for a student on a case-by-case basis.

"(2) **CONSTRUCTION.**—Nothing in this title shall be construed to prevent a State from allowing a local educational agency that has expelled a student from such a student's regular school setting from providing educational services to such student in an alternative setting.

"(3) **SPECIAL RULE.**—(A) Any State that has a law in effect prior to the date of enactment of the Improving America's Schools Act of 1994 which is in conflict with the not less than one year expulsion requirement described in paragraph (1) shall have the period of time described in subparagraph (B) to comply with such requirement.

"(B) The period of time shall be the period beginning on the date of enactment of the Improving America's Schools Act and ending one year after such date.

"(4) **DEFINITION.**—For the purpose of this section, the term 'weapon' means a firearm as such term is defined in section 921 of title 18, United States Code.

"(c) **SPECIAL RULE.**—The provisions of this section shall be construed in a manner consistent with the Individuals with Disabilities Education Act.

"(d) **REPORT TO STATE.**—Each local educational agency requesting assistance from the State educational agency that is to be provided from funds made available to the State under this Act shall provide to the State, in the application requesting such assistance—

"(1) an assurance that such local educational agency is in compliance with the State law required by subsection (b); and

"(2) a description of the circumstances surrounding any expulsions imposed under the State law required by subsection (b), including—

"(A) the name of the school concerned;

"(B) the number of students expelled from such school; and

“(C) the type of weapons concerned.

“(e) REPORTING.—Each State shall report the information described in subsection (c) to the Secretary on an annual basis.

“(f) REPORT TO CONGRESS.—Two years after the date of enactment of the Improving America's Schools Act of 1994, the Secretary shall report to Congress if any State is not in compliance with the requirements of this title.

20 USC 8922.

“SEC. 14602. POLICY REGARDING CRIMINAL JUSTICE SYSTEM REFERRAL

“(a) IN GENERAL.—No funds shall be made available under this Act to any local educational agency unless such agency has a policy requiring referral to the criminal justice or juvenile delinquency system of any student who brings a firearm or weapon to a school served by such agency.

“(b) DEFINITIONS.—For the purpose of this section, the terms ‘firearm’ and ‘school’ have the same meaning given to such terms by section 921(a) of title 18, United States Code.

20 USC 8923.

“SEC. 14603. DATA AND POLICY DISSEMINATION UNDER IDEA

“The Secretary shall—

“(1) widely disseminate the policy of the Department in effect on the date of enactment of the Improving America's Schools Act of 1994 with respect to disciplining children with disabilities;

Records.

“(2) collect data on the incidence of children with disabilities (as such term is defined in section 602(a)(1) of the Individuals With Disabilities Education Act) engaging in life threatening behavior or bringing weapons to schools; and

Reports.

“(3) submit a report to Congress not later than January 31, 1995, analyzing the strengths and problems with the current approaches regarding disciplining children with disabilities.

“PART G—EVALUATIONS

20 USC 8941.

“SEC. 14701. EVALUATIONS.

“(a) EVALUATIONS.—

“(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary is authorized to reserve not more than 0.50 percent of the amount appropriated to carry out each program authorized under this Act—

“(A) to carry out comprehensive evaluations of categorical programs and demonstration projects, and studies of program effectiveness, under this Act, and the administrative impact of such programs on schools and local educational agencies in accordance with subsection (b);

“(B) to evaluate the aggregate short- and long-term effects and cost efficiencies across Federal programs under this Act and related Federal preschool, elementary and secondary programs under other Federal law; and

“(C) to strengthen the usefulness of grant recipient evaluations for continuous program progress through improving the quality, timeliness, efficiency, and utilization of program information on program performance.

“(2) SPECIAL RULE.—(A) Paragraph (1) shall not apply to any program under title I.

“(B) If funds are made available under any program assisted under this Act (other than a program under title

I) for evaluation activities, then the Secretary shall reserve no additional funds pursuant to the authority in subsection (a)(1) to evaluate such program, but shall coordinate the evaluation of such program with the national evaluation described in subsection (b).

“(b) NATIONAL EVALUATIONS.—

“(1) IN GENERAL.—The Secretary shall use the funds made available under subsection (a) to carry out—

“(A) independent studies of categorical and demonstration programs under this Act and the administrative impact of such programs on schools and local educational agencies, that are coordinated with research supported through the Office of Educational Research and Improvement, using rigorous methodological designs and techniques, including longitudinal designs, control groups, and random assignment, as appropriate, to determine—

“(i) the success of such programs in meeting the measurable goals and objectives, through appropriate targeting, quality services, and efficient administration, and in contributing to achieving the National Education Goals, with a priority on assessing program impact on student performance;

“(ii) the short- and long-term effects of program participation on program participants, as appropriate;

“(iii) the cost and efficiency of such programs;

“(iv) to the extent feasible, the cost of serving all students eligible to be served under such programs;

“(v) specific intervention strategies and implementation of such strategies that, based on theory, research and evaluation, offer the promise of improved achievement of program objectives;

“(vi) promising means of identifying and disseminating effective management and educational practices;

“(vii) the effect of such programs on school and local educational agencies’ administrative responsibilities and structure, including the use of local and State resources, with particular attention to schools and agencies serving a high concentration of disadvantaged students; and

“(viii) the effect of Federal categorical programs at the elementary and secondary levels on the proliferation of State categorical education aid programs and regulations, including an evaluation of the State regulations that are developed in response to Federal education laws;

“(B) in collaboration with the national assessment conducted pursuant to section 1601, a comprehensive evaluation of how the Federal Government has assisted the States to reform their educational systems through the various education laws enacted during the 103d Congress, which evaluation shall—

“(i) encompass the changes made in Federal programs pursuant to the Improving America’s Schools Act of 1994 as well as in any other law enacted during the 103d Congress that amended a Federal program assisting preschool, elementary, or secondary education;

"(ii) encompass new initiatives such as initiatives under the Goals 2000: Educate America Act, and the School-to-Work Opportunities Act of 1994, and be coordinated with evaluations of such Acts;

"(iii) include a comprehensive review of the programs developed under the Acts described in clauses (i) and (ii) to determine such programs' overall effect on—

"(I) the readiness of children for schooling;

"(II) the improvement in educational attainment of students in elementary and secondary education; and

"(III) the improvement in skills needed by students to obtain employment or pursue further education upon completion of secondary school or further education;

"(iv) include a comprehensive review of the programs under the Acts described in clauses (i) and (ii) to determine such programs' overall effect—

"(I) on school reform efforts undertaken by States;

"(II) on efforts by States to adopt educational standards to improve schooling for all children, to align their curricula, teacher training, and assessments with such standards, and to bring flexibility to the rules governing how education is to be provided; and

"(III) on student populations that have been the traditional beneficiaries of Federal assistance in order to determine whether such population's educational attainment has been improved as a result of such programs;

"(v) evaluate how the National Assessment Governing Board, the Advisory Council on Education Statistics, the National Education Goals Panel, and the National Education Statistics and Improvement Council (and any other Federal board established to analyze, address, or approve education standards and assessments) coordinate, interact, or duplicate efforts to assist the States in reforming the educational systems of States; and

"(vi) include a review of the programs under the Acts described in clauses (i) and (ii) in such detail as the Secretary deems appropriate, and may involve cooperation with other Federal departments and agencies in order to incorporate evaluations and recommendations of such departments and agencies; and

"(C) a study of the waivers granted under section 14401, which study shall include—

"(i) data on the total number of waiver requests that were granted and the total number of such requests that were denied, disaggregated by the statutory or regulatory requirement for which the waivers were requested; and

"(ii) an analysis of the effect of waivers on categorical program requirements and other flexibility provisions in this Act, the School-to-Work Opportunities

Act of 1994, and the Goals 2000: Educate America Act, on improvement in educational achievement of participating students and on school and local educational agency administrative responsibilities, structure, and resources based on an appropriate sample of State educational agencies, local educational agencies, schools, and tribes receiving waivers.

"(D) a study of the waivers provided under section 1114 to support schoolwide programs which shall include—

"(i) the extent to which schoolwide programs are meeting the intent and purposes of any program for which provisions were waived; and

"(ii) the extent to which the needs of all students are being served by such programs particularly students who would be eligible for assistance under any provisions waived.

"(2) INDEPENDENT PANEL.—The Secretary shall appoint an independent panel to review the plan for the evaluation described in paragraph (1), to advise the Secretary on such evaluation's progress, and to comment, if the panel so wishes, on the final report described in paragraph (3).

"(3) REPORT.—The Secretary shall submit a final report on the evaluation described in this subsection by January 1, 1998, to the Committee on Education and Labor of the House of Representatives and to the Committee on Labor and Human Resources of the Senate.

"(c) RECIPIENT EVALUATION AND QUALITY ASSURANCE IMPROVEMENT.—The Secretary is authorized to provide guidance, technical assistance, and model programs to recipients of assistance under this Act to strengthen information for quality assurance and performance information feedback at State and local levels. Such guidance and assistance shall promote the development, measurement and reporting of valid, reliable, timely and consistent performance indicators within a program in order to promote continuous program improvement. Nothing in this subsection shall be construed to establish a national data system.

"PART H—SENSE OF THE CONGRESS

"SEC. 14801. SENSE OF CONGRESS TO INCREASE THE TOTAL SHARE OF FEDERAL SPENDING ON EDUCATION. 20 USC 8961.

"(a) FINDINGS.—The Congress finds that—

"(1) in order to increase our Nation's standard of living and to increase the number of good jobs, the United States must increase its productivity and ability to compete in the international marketplace by improving the educational level of our workforce;

"(2) although efforts are being made to establish higher educational standards and goals, there is a substantial shortage of resources to meet such standards and goals;

"(3) States and local communities are finding it increasingly difficult to meet ever higher educational standards and goals, and States will not be able to fund needed changes without Federal help to reach such standards and goals;

"(4) the Federal Government has established many educational programs but failed to provide adequate funding for such programs, for example one such program provides edu-

cation to our Nation's disabled students and was established with a promise of 40 percent Federal funding but currently receives only eight percent Federal funding;

"(5) the annual shortfall in Federal education programs is approximately half of the promised funding;

"(6) many needed educational improvements will not need Federal funds, however, other suggested changes such as lengthened school years, better pay, after-school activities, mentoring for students at risk, programs for gifted students, and replacing substandard buildings, will require substantial Federal assistance; and

"(7) the Federal contribution to education is less than two percent of the total Federal budget, and in order to make education a national priority, the total percentage of Federal educational funding should be increased by one percent each year over the next eight years to reach 10 percent of the total Federal budget.

"(b) SENSE OF THE CONGRESS.—It is the sense of the Congress that the total share of the Federal spending on education should increase by at least one percent each year until such share reaches 10 percent of the total Federal budget.

20 USC 8962.

"SEC. 14802. SENSE OF CONGRESS; REQUIREMENT REGARDING NOTICE.

"(a) PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS.—In the case of any equipment or products that may be authorized to be purchased with financial assistance provided under this Act, it is the sense of the Congress that entities receiving such assistance should, in expending the assistance, purchase only American-made equipment and products.

"(b) NOTICE TO RECIPIENTS OF ASSISTANCE.—In providing financial assistance under this Act, the head of each Federal agency shall provide to each recipient of the assistance a notice describing the statement made in subsection (a) by the Congress."

federal register

Monday
July 3, 1995

Part VII

Department of Education

34 CFR Parts 200, 201, 203, 205, and 212
Helping Disadvantaged Children Meet
High Standards; Final Rule

380

BEST COPY AVAILABLE

DEPARTMENT OF EDUCATION

34 CFR Parts 200, 201, 203, 205, and 212

RIN 1810-AA73

Title I—Helping Disadvantaged Children Meet High Standards

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: As specifically required by statute, the U.S. Secretary of Education (Secretary) issues a single set of final regulations implementing the programs under Title I of the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994. In order to provide maximum flexibility to grantees implementing the programs under Title I, these regulations address only those few provisions for which the Secretary believes rulemaking is absolutely necessary. These regulations replace the regulations currently found at 34 CFR Parts 200, 201, 203, 205 and 212.

EFFECTIVE DATE: These regulations take effect on August 2, 1995.

FOR FURTHER INFORMATION CONTACT: For subparts A and E, Wendy Jo New, Telephone: (202) 260-0982; for subpart B, Patricia McKee, Telephone: (202) 260-0991; for subpart D, Paul Brown, Telephone: (202) 260-0976; Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 600 Independence Avenue, SW, Portals Building, room 4400, Washington, DC 20202-6132.

For subparts C and E, James English, Office of Migrant Education, Office of Elementary and Secondary Education, U.S. Department of Education, 600 Independence Avenue, SW, Portals Building, room 4100, Washington, DC 20202-6135. Telephone: (202) 260-1394.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Services (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The 1994 reauthorization of the Elementary and Secondary Education Act of 1965 (ESEA) revised Federal elementary and secondary education programs extensively to help ensure that all children acquire the knowledge and skills they will need to succeed in the 21st century. Under the reauthorized ESEA, Federal education programs for the first time are designed to work together with, rather than separately

from, one another. In addition, rather than operating apart from the broader education that children receive, the ESEA reinforces State and community reform efforts geared to challenging State standards, particularly those initiated or supported by the Goals 2000: Educate America Act. In fact, all of the major ESEA programs are redesigned to support comprehensive State and local reforms of teaching and learning and ensure that all children—whatever their background and whatever school they attend—can reap the benefit of those reforms.

As the largest by far of all ESEA programs, Title I is the centerpiece of the ESEA's efforts to help the neediest schools and students reach the same challenging standards expected of all children. Effective July 1, 1995, the four Title I programs—the basic program in local educational agencies (LEAs) (Part A), the Even Start Family Literacy program (Part B), the Migrant Education program (Part C), and the Neglected, Delinquent, and At-Risk Youth program (Part D)—are designed to work together in support of this common purpose. Moreover, the programs embrace the same fundamental new strategies to help ensure that the intended beneficiaries are not left behind in State and local efforts to promote higher standards. These strategies include: a schoolwide focus on improving teaching and learning, strong program coordination by LEAs, flexibility at the local level combined with clear accountability for results, more focused targeting of resources on the neediest schools, and stronger partnerships between schools and communities to support higher achievement for all children.

On May 1, 1995, the Secretary published a notice of proposed rulemaking (NPRM) for Title I in the Federal Register (60 FR 21400-21419). The preamble to the NPRM included a discussion of the provisions enacted by Congress that were addressed in the NPRM. The preamble also included a summary of the results of the negotiated rulemaking process the Secretary implemented under section 1601(b) of Title I. In developing the proposed regulations, the Secretary considered the comments of persons who responded to the October 28, 1994 Federal Register notice requesting advice and recommendations on regulatory issues under Title I (59 FR 54372-74) and also the comments of participants in the negotiated rulemaking process.

Changes From the NPRM and Analysis of Comments and Changes

In response to the Secretary's invitation to comment in the NPRM, 370 letters were received from State and LEA officials, teachers, organizations, Members of Congress, citizens, and students. An analysis of the comments and the Secretary's responses to those comments is published as an appendix to these final regulations.

In these final regulations, the Secretary has considered these comments, balancing the concerns of State and local school officials, parents, and others with the statutory purposes of the program and the needs of the children to be served. The following sections provide a brief summary of the final regulations that differ from the regulations proposed in the NPRM.

State Responsibilities for Assessment (§§ 200.1, 200.4)

The Secretary has revised §§ 200.1 and 200.4 to clarify that a State's set of high-quality yearly assessments must measure performance in at least mathematics and reading/language arts, but need not be focused solely on reading/language arts or mathematics. Rather, as indicated in § 200.4(a)(1), a State may meet this requirement by developing or adopting assessments in other academic subjects as long as those assessments sufficiently measure performance in mathematics and reading/language arts. For example, an assessment in an academic subject such as social studies may sufficiently measure performance in reading/language arts. Particularly at the secondary level, the Secretary believes it may be especially appropriate to measure performance in reading/language arts through assessments in content areas. In addition, the Secretary emphasizes the importance of all children attaining high levels of performance in all core academic subjects. Limiting the focus of Title I accountability in no way is intended to alter the overall responsibility of States, local school districts, and schools for success of all students in the core academic subjects determined by the State. If a State has standards and assessments for all students in subjects beyond mathematics and reading/language arts, the regulations do not preclude a State from including, for accountability purposes, additional subject areas, and the Secretary encourages them to do so.

Schoolwide Program Requirements (§ 200.8)

Section 200.8(c)(3)(ii)(B)(1)(A) of the proposed regulations would have required a school that combines in its schoolwide program funds received under Part C of Title I, in consultation with parents of migratory children or organizations representing those parents, to first address the identified needs of migratory children that result from the effects of their migratory lifestyle or are needed to permit migratory children to participate effectively in school. The Secretary has revised this section to clarify that both parents and organizations representing those parents may participate in consultation together to clarify that the two parties are not mutually exclusive.

Responsibilities for Providing Services to Children in Private Schools (§ 200.10)

Recognizing that some LEAs identify a public school as eligible for Title I on the basis of student enrollment rather than because it serves an eligible attendance area, the Secretary has amended § 200.10(b) to clarify that if an LEA identifies a public school as eligible on the basis of enrollment, the LEA must, in consultation with private school officials, determine an equitable way to identify eligible private school children.

Payments to LEAs for Capital Expenses (§ 200.16)

Section 200.16(a)(2)(i)(D) makes clear that the salaries of noninstructional technicians who monitor computer-assisted instruction in private schools are administrative costs to be taken off the top of an LEA's allocation. As such, the LEA may fund those technicians from its capital expense funds.

Reservation of Funds by an LEA (§ 200.27)

The Secretary has amended § 200.27 to clarify that capital expenses incurred to implement alternative delivery systems necessary to serve private school students in compliance with *Aguilar v. Felton* that are not reimbursed under section 1002(e) of Title I are administrative costs that must be taken off the top of an LEA's Part A allocation.

Allocation of Funds to School Attendance Areas and Schools (§ 200.28)

The Secretary has made several changes in § 200.28. First, the Secretary has added flexibility in paragraph (a)(3) to permit an LEA that ranks its school attendance areas or schools below 75

percent poverty by grade span groupings to determine the percentage of children from low-income families in the LEA as a whole for each grade span grouping.

Second, the Secretary has addressed a significant problem concerning the availability of adequate poverty data on children who reside in participating public school attendance areas but who attend private schools. Paragraph (a)(2)(i) provides that, if the same data are not available for private school children as are available for public school children, an LEA may use comparable data collected through alternative means such as a survey or from existing sources such as Aid to Families with Dependent Children or tuition scholarship programs. Under paragraph (a)(2)(ii), if complete actual poverty data are not available on private school children, an LEA may extrapolate from actual data on a representative sample of private school children the number of poor private school children. If adequate data are not available under paragraph (a)(2)(i) or (ii), the LEA, for the 1995-96 school year only, shall derive the number of private school children from low-income families by applying the poverty percentage of each participating public school attendance area to the number of private school children who reside in that area.

For example, if a participating public school area has 50 percent poverty and 100 children who reside in that area attend private schools, 50 private school children would be deemed to be poor and thus would generate Part A funds. For school years after 1995-96, however, actual poverty data (or a reasonable estimate based on an adequate sample) will be required. Finally, the Secretary has made clear in paragraph (b)(1) that an LEA must calculate 125 percent of the per-pupil amount of funds the LEA receives for a given fiscal year before the LEA reserves any funds under § 200.27.

Migrant Education Program (MEP) Definitions (§ 200.40)

The proposed regulations contained definitions of "migratory agricultural worker" and "migratory fisher" to require a move to obtain temporary or seasonal agricultural or fishing work "as a principal means of livelihood." This term was proposed to focus MEP services on children who are truly migratory, i.e., children in families with an actual, significant dependency on migratory agricultural or fishing work. In doing so, the new requirement was intended to correct a situation in which persons who move across school district lines to perform temporary or seasonal

agricultural or fishing activities for only a short time are considered "migratory" under the MEP, even when they do not have a significant economic dependence on the agricultural or fishing activities. Because many commenters appeared to have misunderstood the scope and intent of the "principal means of livelihood" language, and the degree of burden that its use would place on State and local program staff and parents of migratory children, the regulations have been revised to more clearly define the term, "principal means of livelihood," for purposes of the MEP and clarify the term's applicability to moves within 15,000 square mile districts.

Use of Program Funds for Unique Program Function Costs (§ 200.41)

The proposed regulations permit an SEA to use MEP funds to carry out other administrative activities, beyond those allowable under § 200.61, that are unique to the MEP "or that are the same or similar to those performed by LEAs in the State under subpart A." In response to comment, the regulations have been revised to clarify that administrative activities "that are the same or similar to those performed by LEAs in the State under subpart A" are included under those administrative activities that are unique to the MEP.

Executive Order 12866

These final regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order, the Secretary has assessed the potential costs and benefits of this regulatory action.

The benefits associated with these final regulations are clear. Because the Secretary has chosen to regulate on very few statutory provisions, SEAs and LEAs have considerable flexibility in implementing the provisions of Title I to meet their particular needs and circumstances. Moreover, the potential costs associated with these final regulations are minimal; they result from specific statutory requirements or have been determined by the Secretary to be necessary for administering the Title I programs effectively and efficiently.

Intergovernmental Review

Grants to SEAs for the MEP and grants to SEAs and LEAs for the Migrant Education Coordination Program are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local

governments for coordination and review of proposed Federal financial assistance.

In accordance with this order, this document is intended to provide early notification of the Secretary's specific plans and actions for these programs.

List of Subjects in 34 CFR Part 200

Administrative practice and procedure, Adult education, Children, Coordination, Education, Education of disadvantaged children, Education of individuals with disabilities, Elementary and secondary education, Eligibility, Family, Family-centered education, Grant programs—education, Indians—education, Institutions of higher education, Interstate coordination, Intrastate coordination, Juvenile delinquency, Local educational agencies, Migratory children, Migratory workers, Neglected, Nonprofit private agencies, Private schools, Public agencies, Reporting and recordkeeping requirements, State-administered programs, State educational agencies, Subgrants.

34 CFR Part 201

Education of disadvantaged, Elementary and secondary education, Grant programs—education, Migrant labor, Reporting and recordkeeping requirements.

34 CFR Part 203

Education of disadvantaged, Elementary and secondary education, Grant programs—education, Juvenile delinquency, Reporting and recordkeeping requirements.

34 CFR Part 205

Education of disadvantaged, Elementary and secondary education, Grant programs—education, Migrant labor.

34 CFR Part 212

Adult education, Education of disadvantaged, Elementary and secondary education, Grant programs—education, Indians—education, Infants and children, Migrant labor, Reporting and recordkeeping requirements.

Dated: June 28, 1995.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers: 84.010, Improving Programs Operated by Local Educational Agencies; 84.011, Migrant Education Basic State Formula Grant Program; 84.013, Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk of Dropping Out; 84.144, Migrant Education Coordination Program; 84.213, Even Start Family Literacy Program)

The Secretary amends Title 34 of the Code of Federal Regulations by removing Parts 201, 203, 205, and 212 and revising Part 200 as follows:

PART 201 [Removed]

1. Part 201 is removed.

PART 203 [Removed]

2. Part 203 is removed.

PART 205 [Removed]

3. Part 205 is removed.

PART 212 [Removed]

4. Part 212 is removed.
5. Part 200 is revised to read as follows:

PART 200—TITLE I—HELPING DISADVANTAGED CHILDREN MEET HIGH STANDARDS

Subpart A—Improving Basic Programs Operated by Local Educational Agencies

Standards, Assessment, and Accountability

- Sec.
- 200.1 Contents of a State plan.
- 200.2 State responsibilities for developing challenging standards.
- 200.3 Requirements for adequate progress.
- 200.4 State responsibilities for assessment.
- 200.5 Requirements for school improvement.
- 200.6 Requirements for LEA improvement.
- 200.7 [Reserved]

Schoolwide Programs

- 200.8 Schoolwide program requirements.
- 200.9 [Reserved]

Participation of Eligible Children in Private Schools

- 200.10 Responsibilities for providing services to children in private schools.
- 200.11 Factors for determining equitable participation of children in private schools.
- 200.12 Requirements to ensure that funds do not benefit a private school.
- 200.13 Requirements concerning property, equipment, and supplies for the benefit of private school children.
- 200.14 [Reserved]

Capital Expenses

- 200.15 Payments to SEAs for capital expenses.
- 200.16 Payments to LEAs for capital expenses.
- 200.17 Use of LEA payments for capital expenses.
- 200.18–200.19 [Reserved]

Procedures for the Within-State Allocation of LEA Program Funds

- 200.20 Allocation of funds to LEAs.
- 200.21 Determination of the number of children eligible to be counted.
- 200.22 Allocation of basic grants.
- 200.23 Allocation of concentration grants.
- 200.24 Allocation of targeted grants.

- 200.25 Applicable hold-harmless provisions.
- 200.26 [Reserved]

Procedures for the Within-District Allocation of LEA Program Funds

- 200.27 Reservation of funds by an LEA.
- 200.28 Allocation of funds to school attendance areas and schools.
- 200.29 [Reserved]

Subpart B—Even Start Family Literacy Programs

- 200.30 Migrant Education Even Start program definition.
- 200.31–200.39 [Reserved]

Subpart C—Migrant Education Program

- 200.40 Program definitions.
- 200.41 Use of program funds for unique program function costs.
- 200.42 Responsibilities of SEAs and operating agencies for assessing the effectiveness of the MEP.
- 200.43 Responsibilities of SEAs and operating agencies for improving services to migratory children.
- 200.44 Use of MEP funds in schoolwide projects.
- 200.45 Responsibilities for participation of children in private schools.
- 200.46–200.49 [Reserved]

Subpart D—Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk of Dropping Out

- 200.50 Program definitions.
- 200.51 SEA counts of eligible children.
- 200.52–200.59 [Reserved]

Subpart E—General Provisions

- 200.60 Reservation of funds for State administration and school improvement.
- 200.61 Use of funds reserved for State administration.
- 200.62 [Reserved]
- 200.63 Supplement, not supplant.
- 200.64 Maintenance of effort.
- 200.65 Definitions.
- 200.66–200.69 [Reserved]

Authority: 20 U.S.C. 6301–6514, unless otherwise noted.

Subpart A—Improving Basic Programs Operated by Local Educational Agencies

Standards, Assessment, and Accountability

§ 200.1 Contents of a State plan.

(a)(1) A State that desires to receive a grant under this subpart shall submit to the Secretary a plan that meets the requirements of this section.

(2) A State plan must be—
(i) Developed with broad-based consultation throughout the planning process with local educational agencies (LEAs), teachers, pupil services personnel, other staff, parents, and administrators, including principals;
(ii) Developed with substantial involvement of the Committee of

Practitioners established under section 1603(b) of the Elementary and Secondary Education Act of 1965, as amended (Act), and continue to involve the Committee in monitoring the plan's implementation; and

(iii) Coordinated with other plans developed under the Act, the Goals 2000: Educate America Act, and other acts, as appropriate, consistent with section 14307 of the Act.

(3) In lieu of a State plan under this section, a State may include programs under this part in a consolidated State plan submitted in accordance with section 14302 of the Act.

(b) A State plan must address the following:

(1) *Challenging standards.* The State plan must include—

(i) Evidence that demonstrates that—

(A) The State has developed or adopted challenging content and student performance standards for all students in accordance with § 200.2; and

(B) The State's procedure for setting the student performance levels applies recognized professional and technical knowledge for establishing the student performance levels; or

(ii) The State's strategy and schedule for developing or adopting by the beginning of the 1997–1998 school year—

(A) Challenging content and student performance standards for all students in accordance with § 200.2(b); or

(B) Content and student performance standards for elementary and secondary school children served under this subpart in accordance with § 200.2(c), if the State will not have developed or adopted content and student performance standards for all students by the 1997–1998 school year or does not intend to develop such standards.

(iii) For subjects in which students will be served under this subpart but for which a State has no standards, the State plan must describe the State's strategy for ensuring that those students are taught the same knowledge and skills and held to the same expectations as are all children.

(2) *Assessments.* The State plan must—

(i) Demonstrate that the State has developed or adopted a set of high-quality yearly student assessments, including assessments that measure performance in at least mathematics and reading/language arts, in accordance with § 200.4, that will be used as the primary means of determining the yearly performance of each school and LEA served under this subpart in enabling all children participating

under this subpart to meet the State's student performance standards; or

(ii) If a State has not developed or adopted assessments that measure performance in at least mathematics and reading/language arts in accordance with § 200.4—

(A) Describe the State's quality benchmarks, timetables, and reporting schedule for completing the development and field-testing of those assessments by the beginning of the 2000–2001 school year; and

(B) Describe the transitional set of yearly statewide assessments the State will use to assess students' performance in mastering complex skills and challenging subject matter; and

(iii)(A) Identify the languages other than English that are spoken by the student population participating under this subpart; and

(B) Indicate the languages for which yearly student assessments that meet the requirements of this section are not available and are needed and develop a timetable for progress toward the development of these assessments.

(3) *Adequate yearly progress.* The State plan must—

(i) Demonstrate, based on the assessments described under § 200.4, what constitutes adequate yearly progress toward enabling all children to meet the State performance standards of—

(A) Any school served under this subpart; and

(B) Any LEA that receives funds under this subpart; or

(ii) For any year in which a State uses transitional assessments under § 200.4(e), describe how the State will identify schools under § 200.5 and LEAs under § 200.6 in accordance with § 200.3.

(4) *Capacity building.* Each State plan shall describe—

(i) How the State educational agency (SEA) will help each LEA and school affected by the State plan to develop the capacity to comply with each of the requirements of sections 1112(c)(1)(D), 1114(b), and 1115(c) of the Act that is applicable to the LEA and school; and

(ii) Other factors the State deems appropriate, which may include opportunity-to-learn standards or strategies developed under the Goals 2000: Educate America Act, to provide students an opportunity to achieve the knowledge and skills described in the challenging content standards developed or adopted by the State.

(Authority: 20 U.S.C. 6311)

§ 200.2 State responsibilities for developing challenging standards.

(a) *Standards in general.* (1) A State shall develop or adopt challenging content and student performance standards that will be used by the State, its LEAs, and its schools to carry out this subpart.

(2) Standards under this subpart must include—

(i) Challenging content standards in academic subjects that—

(A) Specify what children are expected to know and be able to do;

(B) Contain coherent and rigorous content; and

(C) Encourage the teaching of advanced skills; and

(ii) Challenging student performance standards that—

(A) Are aligned with the State's content standards;

(B) Describe two levels of high performance—proficient and advanced—that determine how well children are mastering the material in the State's content standards; and

(C) Describe a third level of performance—partially proficient—to provide complete information to measure the progress of lower-performing children toward achieving to the proficient and advanced levels of performance.

(b) *Standards for all children.* A State that has developed or adopted content standards and student performance standards for all students under Title III of the Goals 2000: Educate America Act or under another process, or will develop or adopt such standards by the beginning of the 1997–1998 school year, shall use those standards, modified, if necessary, to conform with the requirements in paragraph (a) of this section and § 200.3, to carry out this subpart.

(c) *Standards for children served under this subpart.* (1) If a State will not have developed or adopted content and student performance standards for all students by the beginning of the 1997–1998 school year, or does not intend to develop those standards, the State shall develop content and student performance standards for elementary and secondary school children served under this subpart in subject areas as determined by the State, but including at least mathematics and reading/language arts. These standards must—

(i) Include the same knowledge, skills, and levels of performance expected of all children;

(ii) Meet the requirements in paragraph (a) of this section and § 200.3; and

(iii) Be developed by the beginning of the 1997–1998 school year.

(2) If a State has not developed content and student performance standards in mathematics and reading/language arts for elementary and secondary school children served under this subpart by the beginning of the 1997-1998 school year, the State shall then adopt a set of standards in those subjects such as the standards contained in other State plans the Secretary has approved.

(3) If and when a State develops or adopts standards for all children, the State shall use those standards to carry out this subpart.

(Authority: 20 U.S.C. 6311(b))

§ 200.3 Requirements for adequate progress.

(a) Except as provided in paragraph (c) of this section, each State shall determine, based on the State assessment system described in § 200.1, what constitutes adequate yearly progress of—

(1) Any school served under this subpart toward enabling children to meet the State's student performance standards; and

(2) Any LEA that receives funds under this subpart toward enabling children in schools served under this subpart to meet the State's student performance standards.

(b) Adequate yearly progress must be defined in a manner that—

(1) Results in continuous and substantial yearly improvement of each school and LEA sufficient to achieve the goal of all children served under this subpart, particularly economically disadvantaged and limited-English proficient children, meeting the State's proficient and advanced levels of performance;

(2) Is sufficiently rigorous to achieve that goal within an appropriate timeframe; and

(3) Links progress primarily to performance on the State's assessment system under § 200.4, while permitting progress to be established in part through the use of other measures, such as dropout, retention, and attendance rates.

(c) For any year in which a State uses transitional assessments under § 200.4(e), the State shall devise a procedure for identifying schools under § 200.5 and LEAs under § 200.6 that relies on accurate information about the continuous and substantial yearly academic progress of each school and LEA.

(Authority: 20 U.S.C. 6311(b)(2), (7)(B))

§ 200.4 State responsibilities for assessment.

(a) (1) Each State shall develop or adopt a set of high-quality yearly student assessments, including assessments that measure performance in at least mathematics and reading/language arts, that will be used as the primary means of determining the yearly performance of each school and LEA served under this subpart in enabling all children participating under this subpart to meet the State's student performance standards.

(2) A State may satisfy this requirement if the State has developed or adopted a set of high-quality yearly student assessments in other academic subjects that measure performance in mathematics and reading/language arts.

(b) Assessments under this section must meet the following requirements:

(1) Be the same assessments used to measure the performance of all children, if the State measures the performance of all children.

(2)(i) Be aligned with the State's challenging content and student performance standards; and

(ii) Provide coherent information about student attainment of the State's content and student performance standards.

(3)(i)(A) Be used for purposes for which the assessments are valid and reliable; and

(B) Be consistent with relevant, nationally recognized professional and technical standards for those assessments.

(ii) Assessment measures that do not meet these requirements may be included as one of the multiple measures if the State includes in its State plan sufficient information regarding the State's efforts to validate the measures and to report the results of those validation studies.

(4) Measure the proficiency of students in the academic subjects in which a State has adopted challenging content and student performance standards.

(5) Be administered at some time during—

- (i) Grades 3 through 5;
- (ii) Grades 6 through 9; and
- (iii) Grades 10 through 12.

(6) Involve multiple approaches within an assessment system with up-to-date measures of student performance, including measures that assess complex thinking skills and understanding of challenging content.

(7) Provide for—

(i) Participation in the assessment of all students in the grades being assessed;

(ii) Reasonable adaptations and accommodations for students with

diverse learning needs necessary to measure the achievement of those students relative to the State's standards; and

(iii) (A) Inclusion of limited-English proficient students who shall be assessed, to the extent practicable, in the language and form most likely to yield accurate and reliable information on what those students know and can do to determine the students' mastery of skills in subjects other than English.

(B) To meet this requirement, the State—

(1) Shall make every effort to use or develop linguistically accessible assessment measures; and

(2) May request assistance from the Secretary if those measures are needed.

(8) Include, for determining the progress of the LEA only, students who have attended schools in the LEA for a full academic year, but who have not attended a single school in the LEA for a full academic year.

(9) Provide individual student interpretive and descriptive reports that include—

(i) Individual scores; or

(ii) Other information on the attainment of student performance standards.

(10) Enable results to be disaggregated within each State, LEA, and school by—

(i) Gender;

(ii) Each major racial and ethnic group;

(iii) English proficiency status;

(iv) Migrant status;

(v) Students with disabilities as compared to students without disabilities; and

(vi) Economically disadvantaged students as compared to students who are not economically disadvantaged.

(c) (1) If a State has developed or adopted assessments for all students that measure performance in mathematics and reading/language arts under Title III of the Goals 2000: Educate America Act or under another process, the State shall use those assessments, modified, if necessary, to conform with the requirements in paragraph (b) of this section and § 200.3, to carry out this subpart.

(2) Paragraph (c)(1) of this section does not relieve the State from including students served under this subpart in assessments in any other subjects the State has developed or adopted for all children.

(d) (1) Except as provided in paragraph (d) (2) and (3) of this section, if a State has not developed or adopted assessments that measure performance in at least mathematics and reading/language arts that meet the requirements in paragraph (b) of this section, the State shall—

(i) By the beginning of the 2000-2001 school year, develop those assessments and field-test them for one year; and

(ii) Develop a timetable and benchmarks, including reports of validity studies, for completing the development and field testing of those assessments.

(2) The State may request a one-year extension from the Secretary to test its new assessments if the State submits a strategy to correct problems identified in the field testing of its assessments.

(3) If a State has not developed assessments that measure performance in at least mathematics and reading/language arts that meet the requirements in paragraph (b) of this section by the beginning of the 2000-2001 school year and is denied an extension, the State shall adopt a set of assessments in those subjects such as assessments contained in the plans of other States the Secretary has approved.

(e) (1) While a State is developing assessments under paragraph (d) of this section, the State may propose to use a transitional set of yearly statewide assessments that will—(i) Assess the performance of complex skills and challenging subject matter in at least mathematics and reading/language arts, which may be satisfied through assessments in academic subjects other than mathematics and reading/language arts if those assessments measure performance in mathematics and reading/language arts;

(ii) Be administered at some time during—

(A) Grades 3 through 5;

(B) Grades 6 through 9; and

(C) Grades 10 through 12; and

(iii) Include all children in the grades being assessed.

(2) Transitional assessments do not need to meet the other requirements of this section.

(Authority: 20 U.S.C. 6311(b))

§ 200.5 Requirements for school improvement.

(a) *Local review.* (1)(i) Each LEA receiving funds under this subpart shall review annually the progress of each school served under this subpart to determine whether the school is meeting or making adequate progress toward enabling its students to meet the State's student performance standards described in the State plan.

(ii) An LEA may review a targeted assistance school on the progress of only those students that have been or are served under this subpart.

(2) In conducting its review, an LEA shall—

(i) (A) Use the State assessments or transitional assessments described in the State plan; and

(B) Use any additional measures or indicators described in the LEA's plan; or

(ii) If the State assessments are not conducted in a Title I school, use other appropriate measures or indicators to review the school's progress; and

(iii) (A) Disaggregate the results of the review according to the categories specified in § 200.4(b)(10);

(B) Seek to produce, in schoolwide program schools, statistically sound results for each category through the use of oversampling or other means; and

(C) Report disaggregated data to the public only when those data are statistically sound.

(3) The LEA shall—

(i) Publicize and disseminate to teachers and other staff, parents, students, the community, and administrators, including principals, the results of the annual review of all schools served under this subpart in individual school performance profiles; and

(ii) Provide the results of the annual review to schools served under this subpart so that the schools can continually refine their program of instruction to help all children participating under this subpart meet the State's student performance standards.

(Authority: 20 U.S.C. 6317(a))

(Approved by the Office of Management and Budget under control number 1810-0581)

§ 200.6 Requirements for LEA improvement.

(a) *State review.* (1)(i) Each SEA shall review annually the progress of each LEA served under this subpart to determine whether the schools receiving assistance under this subpart are making adequate progress toward enabling their students to meet the State's student performance standards described in the State plan.

(ii) An SEA may review the progress of the schools served by an LEA only for those students that have been or are being served under this subpart.

(2) In conducting its review, an SEA shall—

(i) Disaggregate the results of the review according to the categories specified in § 200.4(b)(10);

(ii) Consider other indicators, if applicable, in accordance with section 1112(b)(1) of the Act; and

(iii) Report disaggregated data to the public only when those data are statistically sound.

(3) The SEA shall publicize and disseminate to LEAs, teachers, and other

staff, parents, students, the community, and administrators, including principals, the results of the State review.

(Authority: 20 U.S.C. 6317(d))

(Approved by the Office of Management and Budget under control number 1810-0581)

§ 200.7 [Reserved]

Schoolwide Programs

§ 200.8 Schoolwide program requirements.

(a) *General.* (1) An eligible school, in consultation with its LEA, may use funds or services under this subpart, in combination with other Federal, State, and local funds it receives, to upgrade the entire educational program in the school to support systemic reform in accordance with the provisions of this section.

(2)(i) Except as provided in paragraph (a)(2)(ii) of this section, a school may not start a new schoolwide program until the SEA provides written information to each LEA that the SEA has established a statewide system of support and improvement.

(ii) If a school desires to start a schoolwide program prior to the establishment of a statewide system of support and improvement, the school shall demonstrate to the LEA that the school has received high-quality technical assistance and support from other providers of assistance.

(b) *Eligibility for a schoolwide program.* A school may operate a schoolwide program if—

(1) The LEA determines that the school serves a participating attendance area or is a participating school under section 1113 of the Act; and

(2)(i) For the initial year of the schoolwide program, the school meets either of the following criteria:

(A) For the 1995-1996 school year—

(1) The school serves a school attendance area in which not less than 60 percent of the children are from low-income families; or

(2) Not less than 60 percent of the children enrolled in the school are from low-income families.

(B) For the 1996-1997 school year and subsequent years, the percentages of children from low-income families in paragraph (b)(2)(i)(A) may not be less than 50 percent.

(ii) The LEA may choose to determine the percentage of children from low-income families under paragraph (b)(2)(i) based on a measure of poverty that is different from the poverty measure or measures used by the LEA to identify and rank school attendance areas for eligibility and participation under this subpart.

(c) *Availability of other Federal funds.*

(1) In addition to funds under this subpart, a school may use in its schoolwide program Federal funds under any program administered by the Secretary, except programs under the Individuals with Disabilities Education Act (IDEA), that is included on the most recent notice published by the Secretary in the *Federal Register*.

(2) For the purposes of this section, the authority to combine funds from other Federal programs also applies to services provided to a school with those funds.

(3) (i) Except as provided in paragraph (c)(3)(ii) of this section, a school that combines funds from any other Federal program administered by the Secretary in a schoolwide program—

(A) Is not required to meet the statutory or regulatory requirements of that program applicable at the school level; but

(B) Shall meet the intent and purposes of that program to ensure that the needs of the intended beneficiaries of that program are addressed.

(ii)(A) An LEA or a school that chooses to use funds from other programs shall not be relieved of statutory and regulatory requirements applicable to those programs relating to—

- (1) Health and safety;
- (2) Civil rights;
- (3) Gender equity;
- (4) Participation and involvement of parents and students;
- (5) Private school children, teachers, and other educational personnel;
- (6) Maintenance of effort;
- (7) Comparability of services;
- (8) Use of Federal funds to supplement, not supplant non-Federal funds in accordance with paragraph (f)(1)(iii) and (2) of this section; and
- (9) Distribution of funds to SEAs and LEAs.

(B) A school operating a schoolwide program shall comply with the following requirements if it combines funds from these programs in its schoolwide program:

(1) *Migrant education.* A school that combines in its schoolwide program funds received under Part C of Title I of the Act shall—

(i) In consultation with parents of migratory children or organizations representing those parents, or both, first address the identified needs of migratory children that result from the effects of their migratory lifestyle or are needed to permit migratory children to participate effectively in school; and

(ii) Document that services to address those needs have been provided.

(2) *Indian education.* A school may combine funds received under subpart 1

of Part A of Title IX of the Act in its schoolwide program if the parent committee established by the LEA under section 9114(c)(4) of the Act approves the inclusion of those funds.

(iii) This paragraph does not relieve—

(A) An LEA from complying with all requirements that do not affect the operation of a schoolwide program; or

(B) A non-schoolwide program school from complying with all applicable requirements.

(d) *Components of a schoolwide program.* A schoolwide program must include the following components:

(1) A comprehensive needs assessment involving the parties listed in paragraph (e)(2)(ii) of this section of the entire school that is based on—

(i) Information on the performance of children in relation to the State content standards and the State student performance standards under section 1111(b)(1) of the Act; or

(ii) Until the State develops or adopts standards under section 1111(b)(1) of the Act, an analysis of available data on the achievement of students in the school.

(2) Schoolwide reform strategies that—

(i) Provide opportunities, based on best knowledge and practice, for all children in the school to meet the State's proficient and advanced levels of student performance;

(ii) Are based on effective means of improving the achievement of children, such as utilizing research-based teaching strategies;

(iii) Use effective instructional strategies that—

(A) Increase the amount and quality of learning time, such as providing an extended school year and before- and after-school and summer programs;

(B) Provide an enriched and accelerated curriculum; and

(C) Meet the educational needs of historically underserved populations;

(iv) (A) Address the needs of all children in the school, particularly the needs of children who are members of the target population of any program that is included in the schoolwide program under paragraph (c) of this section; and

(B) Address how the school will determine if those needs have been met; and

(v) Are consistent with, and designed to implement, the State and local improvement plans, if any, approved under Title III of the Goals 2000: Educate America Act.

(3) Instruction by highly qualified professional staff.

(4)(i) Professional development, in accordance with section 1119 of the Act,

for teachers and aides and, where appropriate, principals, pupil services personnel, other school staff, and parents to enable all children in the school to meet the State's student performance standards.

(ii) The school shall devote sufficient resources to effectively carry out its responsibilities for professional development, either alone or in consortia with other schools.

(5) Strategies to increase parental involvement, such as family literacy services.

(6) Strategies in an elementary school for assisting preschool children in the transition from early childhood programs, such as Head Start, Even Start, or a State-run preschool program, to the schoolwide program.

(7) Strategies to involve teachers in the decisions regarding the use of additional local, high-quality student assessments, if any, under section 1112(b)(1) of the Act to provide information on, and to improve, the performance of individual students and the overall instructional program.

(8) (i) Activities to ensure that students who experience difficulty mastering any of the standards required by section 1111(b) of the Act during the school year will be provided effective, timely additional assistance, which must include—

(A) Strategies to ensure that students' difficulties are identified on a timely basis and to provide sufficient information on which to base effective assistance;

(B) To the extent the school determines feasible using funds under this subpart, periodic training for teachers in how to identify those difficulties and to provide assistance to individual students; and

(C) For any student who has not met those standards, parent-teacher conferences to discuss—

(1) What the school will do to help the student meet the standards;

(2) What the parents can do to help the student improve the student's performance; and

(3) Additional assistance that may be available to the student at the school or elsewhere in the community.

(ii) This provision does not—

(A) Require the school or LEA to develop an individualized education program (IEP) for each student identified under paragraph (d)(8) of this section; or

(B) Relieve the school or LEA from the requirement under the IDEA to develop IEPs for students with disabilities.

(e) *Schoolwide program plan.* (1) An eligible school that desires to operate a schoolwide program shall develop, in

consultation with the LEA and its school support team or other technical assistance provider, a comprehensive plan for reforming the total instructional program in the school that—

(i) Incorporates the components under paragraph (d) of this section;

(ii) Describes how the school will use resources under this subpart and from other sources to implement those components;

(iii) Includes a list of State and local programs and other Federal programs under paragraph (c) of this section that will be included in the schoolwide program; and

(iv) (A) If the State has developed or adopted a State assessment system under section 1111(b)(3) of the Act—

(1) Describes how the school will provide individual student assessment results, including an interpretation of those results, to the parents of each child who participates in that assessment; and

(2) Provides for the disaggregation of data on the assessment results of students and the reporting of those data in accordance with § 200.5(a); or

(B) If the State has not developed or adopted a State assessment system under section 1111(b)(3) of the Act, describes the data on the achievement of students in the school and effective instructional and school improvement practices on which the plan is based.

(2) The schoolwide program plan must be—

(i) Developed during a one-year period unless—

(A) The LEA, after considering the recommendation of its technical assistance providers, determines that less time is needed to develop and implement the schoolwide program; or

(B) The school is operating a schoolwide program under section 1015 of Chapter 1 of Title I of the Act during the 1994–1995 school year, in which case the school may continue its schoolwide program but shall amend its current plan or develop a new plan in accordance with this section during the first year it receives funds under this part;

(ii) Developed with the involvement of the community to be served and individuals who will carry out the plan, including—

(A) Teachers;

(B) Principals;

(C) Other school staff;

(D) Pupil services personnel, if appropriate;

(E) Parents of students in the school; and

(F) If the plan relates to a secondary school, students from the school;

(iii) Available to the LEA, parents, and the public;

(iv) Translated, to the extent feasible, into any language that a significant percentage of the parents of participating children in the school speak as their primary language; and

(v) If appropriate, developed in coordination with other programs, including those under the School-to-Work Opportunities Act of 1994, the Carl D. Perkins Vocational and Applied Technology Education Act, and the National and Community Service Act of 1990.

(3) The schoolwide program plan remains in effect for the duration of the school's participation under this section.

(4) A school operating a schoolwide program shall review and revise its plan, as necessary, to reflect changes in its schoolwide program or changes to reflect State standards established after the plan was developed.

(f) *Effect of operating a schoolwide program.* (1) No school operating a schoolwide program shall be required to—

(i) Identify particular children under this subpart and under any other Federal program included under paragraph (c) of this section as eligible to participate in the schoolwide program;

(ii) Document that funds available under this subpart and any other Federal program included under paragraph (c) of this section are used to benefit only the intended beneficiaries of the respective programs; or

(iii) Demonstrate that the particular services paid for with funds under this subpart and under any other Federal program included under paragraph (c) of this section supplement the services regularly provided in that school.

(2) A school operating a schoolwide program shall use funds available under this subpart and under any other Federal program included under paragraph (c) of this section only to supplement the total amount of funds that would, in the absence of those funds, be made available from non-Federal sources for that school, including funds needed to provide services that are required by law for children with disabilities and children with limited-English proficiency.

(Authority: 20 U.S.C. 6314, 6396(b))

§ 200.9 (Reserved)

Participation of Eligible Children in Private Schools

§ 200.10 Responsibilities for providing services to children in private schools.

(a) An LEA shall, after timely and meaningful consultation with appropriate private school officials,

provide special educational services or other benefits under this subpart, on an equitable basis, to eligible children who are enrolled in private elementary and secondary schools in accordance with the requirements in §§ 200.11 through 200.17 and section 1120 of the Act.

(b) (1) Eligible private school children are children who—

(i) Reside in a participating school attendance area of the LEA; and

(ii) Meet the criteria in section 1115(b) of the Act.

(2) If an LEA identifies a public school as eligible on the basis of enrollment, rather than because it serves an eligible school attendance area, the LEA shall, in consultation with private school officials, determine an equitable way to identify eligible private school children.

(3) Among the eligible private school children, the LEA shall select children to participate in a manner that is consistent with the provisions in § 200.11.

(Authority: 20 U.S.C. 6315(b); 6321(a))

§ 200.11 Factors for determining equitable participation of children in private schools.

(a) *Equal expenditures.* (1) Expenditures of funds made available under this subpart for services for eligible private school children in the aggregate must be equal to the amount of funds generated by private school children from low-income families under § 200.28.

(2) An LEA shall meet this requirement as follows:

(i) Before determining equal expenditures under paragraph (a)(1) of this section, the LEA shall reserve, from the LEA's whole allocation, funds needed to carry out § 200.27.

(ii) The LEA shall reserve the amounts of funds generated by private school children under § 200.28 and, in consultation with appropriate private school officials, may—

(A) Combine those amounts to create a pool of funds from which the LEA provides equitable services to eligible private school children, in the aggregate, in greatest need of those services; or

(B) Provide equitable services to eligible children in each private school with the funds generated by children from low-income families under § 200.28 who attend that private school.

(b) *Services on an equitable basis.* (1) The services that an LEA provides to eligible private school children must be equitable in comparison to the services and other benefits provided to public school children participating under this subpart.

(2) Services are equitable if the LEA—

(i) Addresses and assesses the specific needs and educational progress of eligible private school children on a comparable basis as public school children;

(ii) Meets the equal expenditure requirements under paragraph (a) of this section; and

(iii) Provides private school children with an opportunity to participate that—(A) Is equitable to the opportunity provided to public school children; and (B) Provides reasonable promise of those children achieving the high levels called for by the State's student performance standards.

(3) The LEA shall make the final decisions with respect to the services to be provided to eligible private school children.

(Authority: 20 U.S.C. 6321(a))

§ 200.12 Requirements to ensure that funds do not benefit a private school.

(a) An LEA shall use funds under this subpart to provide services that supplement, and in no case supplant, the level of services that would, in the absence of Title I services, be available to participating children in private schools.

(b) An LEA shall use funds under this subpart to meet the special educational needs of participating private school children, but not for—

(1) The needs of the private school; or

(2) The general needs of children in the private school.

(Authority: 20 U.S.C. 6321(a), 6322(b))

§ 200.13 Requirements concerning property, equipment, and supplies for the benefit of private school children.

(a) A public agency must keep title to and exercise continuing administrative control of all property, equipment, and supplies that the public agency acquires with funds under this subpart for the benefit of eligible private school children.

(b) The public agency may place equipment and supplies in a private school for the period of time needed for the program.

(c) The public agency shall ensure that the equipment and supplies placed in a private school—

(1) Are used only for Title I purposes; and

(2) Can be removed from the private school without remodeling the private school facility.

(d) The public agency shall remove equipment and supplies from a private school if—

(1) The equipment and supplies are no longer needed for Title I purposes; or

(2) Removal is necessary to avoid unauthorized use of the equipment or supplies for other than Title I purposes.

(e) No funds under this subpart may be used for repairs, minor remodeling, or construction of private school facilities.

(f) For the purpose of this section, the term *public agency* includes the LEA.

(Authority: 20 U.S.C. 6321(c))

§ 200.14 [Reserved]

Capital Expenses

§ 200.15 Payments to SEAs for capital expenses.

(a) From the amount appropriated for capital expenses under section 1002(e) of the Act, the Secretary pays a State an amount that bears the same ratio to the amount appropriated as the number of private school children in the State who received services under this subpart in the most recent year for which data satisfactory to the Secretary are available bears to the total number of private school children served in that same year in all the States.

(b) The Secretary reallocates funds not used by a State for purposes of § 200.16 among other States on the basis of their respective needs.

(Authority: 20 U.S.C. 6321(e)(1))

§ 200.16 Payments to LEAs for capital expenses.

(a)(1)(i) An LEA may apply to the SEA for a payment to cover capital expenses that the LEA, in providing equitable services to eligible private school children—

(A) Is currently incurring; or

(B) Would incur because of an expected increase in the number of private school children to be served.

(ii) An LEA may apply for a payment to cover capital expenses it incurred in prior years for which it has not been reimbursed if the LEA demonstrates that its current needs for capital expenses have been met.

(2) *Capital expenses* means only expenditures for noninstructional goods and services that are incurred as a result of implementation of alternative delivery systems to comply with the requirements of *Aguilar v. Felton*. These expenditures—

(i) Include—

(A) The purchase, lease, and renovation of real and personal property (including mobile educational units, and leasing of neutral sites or space);

(B) Insurance and maintenance costs;

(C) Transportation; and

(D) Other comparable goods and services, including noninstructional computer technicians; and

(ii) Do not include the purchase of instructional equipment such as computers.

(b) An SEA shall distribute funds it receives under § 200.15 to LEAs that apply on the basis of need.

(Authority: 20 U.S.C. 6321(e))

§ 200.17 Use of LEA payments for capital expenses.

(a) Unless an LEA is authorized by the SEA to reimburse itself for capital expenses incurred in prior years, the LEA shall use payments received under § 200.16 to cover capital expenses the LEA is incurring or will incur to maintain or increase the number of private school children being served.

(b) The LEA may not take the payments received under § 200.16 into account in meeting the requirements in § 200.11(a).

(c) The LEA shall account separately for payments received under § 200.16.

(Authority: 20 U.S.C. 6321(e)(3))

§ 200.18–200.19 [Reserved]

Procedures for the Within-State Allocation of LEA Program Funds

§ 200.20 Allocation of funds to LEAs.

(a) *Subcounty allocations.* (1) Except as provided in paragraph (b) of this section, § 200.23(c)(1) and (3)(ii), and § 200.25, an SEA shall allocate the county amounts determined by the Secretary for basic grants, concentration grants, and targeted grants to each eligible LEA within the county on the basis of the number of children counted in § 200.21.

(2) If an LEA overlaps a county boundary, the SEA shall make, on a proportionate basis, a separate allocation to the LEA from the county aggregate amount for each county in which the LEA is located, provided the LEA is eligible for a grant.

(b) *Statewide allocations.* (1) In any State in which a large number of LEAs overlap county boundaries, an SEA may apply to the Secretary for authority to make allocations under basic grants or targeted grants directly to LEAs without regard to counties.

(2) In its application, the SEA shall—

(i) Identify the data in § 200.21(b) the SEA will use for LEA allocations; and

(ii) Provide assurances that—

(A) Allocations will be based on the data approved by the Secretary under this paragraph; and

(B) A procedure has been established through which an LEA dissatisfied with the determination by the SEA may appeal directly to the Secretary for a final determination.

(c) *LEAs containing two or more counties in their entirety.* If an LEA contains two or more counties in their entirety, the SEA shall allocate funds

under paragraphs (a) and (b) of this section to each county as if such county were a separate LEA.

(Authority: 20 U.S.C. 6333-6335)

§ 200.21 Determination of the number of children eligible to be counted.

(a) *General.* An SEA shall count the number of children aged 5-17, inclusive, from low-income families and the number of children residing in local institutions for neglected children.

(b) *Children from low-income families.* (1) An SEA shall count the number of children from low-income families in the school districts of the LEAs using the best available data. The SEA shall use the same measure of low-income throughout the State.

(2) An SEA may use one of the following options to obtain its count of children from low-income families:

(i) The factors under section 1124(c)(1) of the Act (excluding children in local institutions for neglected or delinquent children), which include—

(A) Census data on children in families below the poverty level;

(B) Data on children in families above poverty receiving payments under the program of Aid to Families with Dependent Children (AFDC); and

(C) Data on foster children.

(ii) Alternative data that an SEA determines best reflect the distribution of children from low-income families and that are adjusted to be equivalent in proportion to the total number of children counted under section 1124(c) of the Act (excluding children in local institutions for neglected or delinquent children).

(iii) Data that more accurately reflect the distribution of poverty.

(c) *Children in local institutions for neglected children.*

The SEA shall count the number of children ages 5 to 17, inclusive, in the LEA who resided in a local institution for neglected children—and were not counted under subpart 1 of Part D of Title I (programs for neglected or delinquent children operated by State agencies)—for at least 30 consecutive days, at least one day of which was in the month of October of the preceding fiscal year.

(Authority: 20 U.S.C. 6333(c))

§ 200.22 Allocation of basic grants.

(a) *Eligibility.* An LEA is eligible for a basic grant if—(1) In school year 1995-96, there are at least 10 children counted under § 200.21 in the LEA; and

(2) Beginning in school year 1996-97—

(i) There are at least 10 children counted under § 200.21 in the LEA; and

(ii) The number of those children is greater than two percent of the LEA's total population aged 5 to 17 years, inclusive.

(b) *Amount of the LEA grant.* An SEA shall allocate basic grant funds to eligible LEAs as provided in § 200.20, except that the SEA shall apply the hold-harmless provisions described in § 200.25.

(Authority: 20 U.S.C. 6333)

§ 200.23 Allocation of concentration grants.

(a) *Eligibility.* An LEA is eligible for a concentration grant if—

(1) The LEA is eligible for a basic grant under paragraph § 200.22(a); and

(2) The number of children counted under § 200.21 in the LEA exceeds—

(i) 6,500; or

(ii) 15 percent of the LEA's total population ages 5 to 17, inclusive.

(b) *Amount of the grant.* (1) Except as provided in paragraph (c) of this section, an SEA shall allocate a county's concentration grant funds only to LEAs that—

(i) Lie, in whole or in part, within the county; and

(ii) Meet the eligibility criteria in paragraph (a) of this section.

(2) An SEA shall allocate concentration grant funds to eligible LEAs as provided in § 200.20(a), except that the SEA shall apply the hold-harmless provision described in § 200.25(a).

(c) *Exceptions.* (1) *Eligible LEAs in ineligible counties.*

(i) An SEA may reserve not more than two percent of the amount of concentration grant funds it receives to make direct allocations to eligible LEAs that are located in counties that do not receive a concentration grant allocation.

(ii) If an SEA plans to reserve concentration grant funds under paragraph (c)(1)(i) of this section, the SEA, before allocating any concentration grant funds under paragraph (b) of this section, shall—

(A) Determine which LEAs located in ineligible counties are eligible to receive concentration grant funds;

(B) Determine the appropriate amount to be reserved;

(C) Proportionately reduce the amount available for concentration grants for eligible counties or LEAs to provide the reserved amount, except that for school year 1996-97 an SEA may not reduce an LEA's allocation below the hold-harmless amount determined under § 200.25(a);

(D) Rank order the LEAs eligible for concentration grant funds that are located in ineligible counties according to the number or percentage of children counted under § 200.21;

(E) Select in rank order, those LEAs that the SEA plans to provide concentration grant funds; and

(F) Distribute the reserved funds among the selected LEAs based on the number of children counted under § 200.21.

(2) *Eligible counties with no eligible LEAs.* In a county in which no LEA meets the eligibility criteria in paragraph (a) of this section, an SEA shall—

(i) Identify those LEAs in which either the number or percentage of children counted under § 200.21 exceeds the average number or percentage of those children in the county; and

(ii) Allocate concentration grant funds for the county among the LEAs identified in paragraph (c)(2)(i) of this section based on the number of children counted under § 200.21 in each LEA compared to the number of those children in all those LEAs.

(3) *States receiving minimum allocations.* In a State that receives a minimum concentration grant under section 1124A(d) of the Act, the SEA shall—

(i) Allocate concentration grant funds among LEAs in the State under paragraphs (a), (b), and (c)(1) and (2) of this section; or

(ii) Without regard to the counties in which the LEAs are located—(A) Identify those LEAs in which either the number or percentage of children counted under § 200.21 exceeds the average number or percentage of those children in the State; and

(B) Allocate concentration grant funds among the LEAs identified in paragraph (c)(3)(ii)(A) of this section based on the number of children counted under § 200.21 in each LEA.

(Authority: 20 U.S.C. 6334)

§ 200.24 Allocation of targeted grants.

(a) *Eligibility.* An LEA is eligible for a targeted grant if—

(1) There are at least 10 children counted under § 200.21 in the LEA; and

(2) The number of those children is at least five percent of the LEA's total population ages 5 to 17 years, inclusive.

(b) *Weighted child count.* In determining an LEA's grant, the SEA shall compute a weighted child count in accordance with section 1125(c) of the Act by taking the larger of—

(1) *Percent-weighted child count.* The number of children counted under § 200.21 multiplied by the weights shown in the following table, with the weights applied in a step-wise manner so that only those children above each weighting threshold receive the higher weight:

LEA percentage of children counted under § 200.21 as a percent of total children ages 5 through 17	Weights
0 to 14.265%	1.00
More than 14.265% up to 21.553%	1.75
More than 21.553% up to 29.223%	2.50
More than 29.223% up to 36.538%	3.25
More than 36.538%	4.00

or:

(2) *Number-weighted child count.* The number of children counted under § 200.21 multiplied by the weights shown in the following table, with the weights applied in a step-wise manner so that only those children above each weighting threshold receive the higher weight:

LEA number of children counted under § 200.21	Weights
1 to 575	1.0
576 to 1,870	1.5
1,871 to 6,910	2.0
6,911 to 42,000	2.5
42,001 or more	3.0

(c) *Amount of LEA grant.* An SEA shall allocate targeted grant funds to eligible LEAs as provided in § 200.20 based on the weighted child count determined in paragraph (b) of this section, except that the SEA shall apply the hold-harmless provisions described in § 200.25.

(Authority: 20 U.S.C. 6335)

§ 200.25 Applicable hold-harmless provisions.

(a) *General.* (1) An SEA may not reduce the allocation of an eligible LEA below the hold-harmless amounts

established under section 1122(c) of the Act.

(2) The hold-harmless protection limits the maximum reduction in an LEA's allocation when compared to the LEA's allocation for the preceding year.

(3) The hold-harmless shall be applied separately for basic grants, concentration grants, and targeted grants, and shall be applied for each grant formula only in those years authorized under section 1122(c) of the Act, as shown in the table contained in paragraph (a)(4) of this section.

(4) Under section 1122(c) of the Act, the hold-harmless percentage varies based on the year and, for school years 1997-98 and beyond, based on the LEA's number of children counted under § 200.21 as a percentage of the total number of children ages 5-17, inclusive, in the LEA, as shown in the following table:

School year	LEA's § 200.21 children as a percentage of children ages 5-17, inclusive	Hold-harmless percentage	Applicable grant formulas
1995-96	Not applicable	85	Basic Grants.
1996-97	Not applicable	100	Basic Grants and Concentration Grants.
1997-98 and beyond.	30% or more	95	Basic Grants and Targeted Grants.
	15% or more and less than 30%	90	
	Less than 15%	85	

(5) For school year 1995-96, the SEA shall compute each LEA's hold-harmless amount without regard to the amount the LEA received for delinquent children counted under section 1005 of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965 as in effect on September 30, 1994.

(b) *Adjustment for insufficient funds.*

(1) *School year 1995-96.* If the Secretary's allocation for a county is not sufficient to give an LEA 85 percent of the amount it received for school year 1994-95, without regard to the amount the LEA received for delinquent children, the SEA may use funds received under Part D, subpart 2 (local agency programs) of the Act to bring such LEA up to its hold-harmless amount.

(2) *School years 1997-98 and beyond.* If the Secretary's allocation for a county is not sufficient to meet the LEA hold-harmless requirements of paragraph (a) of this section, the SEA shall reallocate funds proportionately from all other LEAs in the State that are receiving funds in excess of the hold-harmless amounts specified in paragraph (a) of this section.

(c) *Eligibility for hold-harmless protection.* An LEA must be eligible for basic grant, concentration grant, and targeted grant funds in order for the respective provisions in paragraphs (a) and (b) of this section to apply.

(Authority: 20 U.S.C. 6332(c))

§ 200.26 [Reserved]

Procedures for the Within-District Allocation of LEA Program Funds

§ 200.27 Reservation of funds by an LEA.

Before allocating funds in accordance with § 200.28, an LEA shall reserve funds as are reasonable and necessary to—

(a) Provide services comparable to those provided to children in participating school attendance areas and schools to serve—

(1) Children in local institutions for neglected children; and

(2) Where appropriate—

(i) Eligible homeless children who do not attend participating schools, including providing educationally related support services to children in shelters;

(ii) Children in local institutions for delinquent children; and

(iii) Neglected and delinquent children in community-day school programs;

(b) Meet the requirements for parental involvement in section 1118(a)(3) of the Act;

(c) Administer programs for public and private school children under this part, including special capital expenses not paid for from funds provided under § 200.16 that are incurred as a result of implementing alternative delivery systems to comply with the requirements of *Aguilar v. Felton*; and

(d) Conduct other authorized activities such as professional development, school improvement, and coordinated services.

(Authority: 20 U.S.C. 6313(c)(3), 6317(c), 6319(a)(3), 6320)

§ 200.28 Allocation of funds to school attendance areas and schools.

(a)(1) An LEA shall allocate funds under this subpart to school attendance areas or schools, identified as eligible and selected to participate under section 1113(a) or (b) of the Act, in rank order

on the basis of the total number of children from low-income families in each area or school.

(2)(i) In calculating the total number of children from low-income families, the LEA shall include children from low-income families who attend private schools, using—

(A) The same poverty data, if available, as the LEA uses to count public school children; or

(B) If the same data are not available, comparable data—

(1) Collected through alternative means such as a survey; or

(2) From existing sources such as AFDC or tuition scholarship programs.

(ii) If complete actual poverty data are not available on private school children, an LEA may extrapolate from actual data on a representative sample of private school children the number of children from low-income families who attend private schools.

(iii) For the 1995–96 school year only, if adequate data on the number of private school children from low-income families are not available under paragraph (a)(2) (i) or (ii) of this section, the LEA shall derive the number of private school children from low-income families by applying the poverty percentage of each participating public school attendance area to the number of private school children who reside in that area.

(3) If an LEA ranks its school attendance areas or schools below 75 percent poverty by grade span groupings, the LEA may determine the percentage of children from low-income families in the LEA as a whole for each grade span grouping.

(b)(1) Except as provided in paragraphs (b)(2) and (d) of this section, an LEA shall allocate to each participating school attendance area or school an amount for each low-income child that is at least 125 percent of the per-pupil amount of funds the LEA received for that year under subpart 2 of Part A of Title I. The LEA shall calculate this per-pupil amount before the LEA reserves any funds under § 200.27, using the poverty measure selected by the LEA under section 1113(a)(5) of the Act.

(2) If an LEA is serving only school attendance areas or schools in which the percentage of children from low-income families is 35 percent or more, the LEA is not required to allocate a per-pupil amount of at least 125 percent.

(c) An LEA is not required to allocate the same per-pupil amount to each participating school attendance area or school provided the LEA allocates higher per-pupil amounts to areas or schools with higher concentrations of

poverty than to areas or schools with lower concentrations of poverty.

(d) An LEA may reduce the amount of funds allocated under this section to a school attendance area or school if the area or school is spending supplemental State or local funds for programs that meet the requirements in § 200.62(c).

(e) If an LEA contains two or more counties in their entirety, the LEA shall distribute to schools within each county a share of the LEA's total grant that is no less than the county's share of the child count used to calculate the LEA's grant.

(Authority: 20 U.S.C. 6313(c), 6333(c)(2))

§ 200.29 (Reserved)

Subpart B—Even Start Family Literacy Program

§ 200.30 Migrant Education Even Start Program Definition.

Eligible participants under the Migrant Education Even Start Program (MEES) are those who meet the definitions of a migratory child, a migratory agricultural worker or a migratory fisher in § 200.40.

(Authority: 20 U.S.C. 6362, 6511)

§§ 200.31—200.39 (Reserved)

Subpart C—Migrant Education Program

§ 200.40 Program definitions.

The following definitions apply to programs and projects operated under this subpart:

(a) *Agricultural activity* means—

- (1) Any activity directly related to the production or processing of crops, dairy products, poultry or livestock for initial commercial sale or personal subsistence;

- (2) Any activity directly related to the cultivation or harvesting of trees; or
- (3) Any activity directly related to fish farms.

(b) *Fishing activity* means any activity directly related to the catching or processing of fish or shellfish for initial commercial sale or personal subsistence.

(c) *Migratory agricultural worker* means a person who, in the preceding 36 months, has moved from one school district to another, or from one administrative area to another within a State that is comprised of a single school district, in order to obtain temporary or seasonal employment in agricultural activities (including dairy work) as a principal means of livelihood.

(d) *Migratory child* means a child who is, or whose parent, spouse, or guardian is, a migratory agricultural worker,

including a migratory dairy worker, or a migratory fisher, and who, in the preceding 36 months, in order to obtain, or accompany such parent, spouse, guardian in order to obtain, temporary or seasonal employment in agricultural or fishing work—

(1) Has moved from one school district to another;

(2) In a State that is comprised of a single school district, has moved from one administrative area to another within such district; or

(3) Resides in a school district of more than 15,000 square miles, and migrates a distance of 20 miles or more to a temporary residence to engage in a fishing activity.

(e) *Migratory fisher* means a person who, in the preceding 36 months, has moved from one school district to another, or from one administrative area to another within a State that is comprised of a single school district, in order to obtain temporary or seasonal employment in fishing activities as a principal means of livelihood. This definition also includes a person who, in the preceding 36 months, resided in a school district of more than 15,000 square miles, and moved a distance of 20 miles or more to a temporary residence to engage in a fishing activity as a principal means of livelihood.

(f) *Principal means of livelihood* means that temporary or seasonal agricultural or fishing activity plays an important part in providing a living for the worker and his or her family.

(Authority: 20 U.S.C. 6391–6399, 6511)

§ 200.41 Use of program funds for unique program function costs.

An SEA may use the funds available from its State Migrant Education Program to carry out other administrative activities, beyond those allowable under § 200.61, that are unique to the MEP, including those that are the same or similar to those performed by LEAs in the State under subpart A. These activities include but are not limited to—

(a) Statewide identification and recruitment of eligible migratory children;

(b) Interstate and intrastate coordination of the State MEP and its local projects with other relevant programs and local projects in the State and in other States;

(c) Procedures for providing for educational continuity for migratory children through the timely transfer of educational and health records, beyond that required generally by State and local agencies.

(d) Collecting and using information for accurate distribution of subgrant funds; and

(e) Development and implementation of a statewide plan for needs assessment and service delivery.

(f) Supervision of instructional and support staff.

(Authority: 20 U.S.C. 6392, 6511)

§ 200.42 Responsibilities of SEAs and operating agencies for assessing the effectiveness of the MEP.

(a) Each SEA and operating agency receiving funds under the MEP has the responsibility to determine the effectiveness of its program and projects in providing migratory students with the opportunity to meet the same challenging State content and performance standards, required under § 200.2, that the State has established for all children.

(b) To determine the effectiveness of its program and projects, each SEA and operating agency receiving MEP funds shall, wherever feasible, use the same high-quality yearly student assessments or transitional assessments that the State establishes for use in meeting the requirements of § 200.4.

(c) In a project where it is not feasible to use the same student assessments that are being used to meet the requirements of § 200.4 (e.g., in a summer-only project, or in a project where no migratory students are enrolled at the time the State-established assessment takes place), the SEA must ensure that the relevant operating agency carries out some other reasonable process or processes for examining the effectiveness of the project.

(Authority: 20 U.S.C. 6394)

§ 200.43 Responsibilities of SEAs and operating agencies for improving services to migratory children.

While the specific school improvement requirements of section 1116 of the statute do not apply to the MEP, SEAs and local operating agencies receiving MEP funds shall use the results of the assessments carried out under § 200.42 to improve the services provided to migratory children.

(Authority: 20 U.S.C. 6394)

§ 200.44 Use of MEP funds in schoolwide projects.

Funds available under Part C of Title I of the Act may be used in a schoolwide program subject to the requirements of § 200.8(c)(3)(ii)(B)(1).

(Authority: 20 U.S.C. 6396)

§ 200.45 Responsibilities for participation of children in private schools.

An SEA and its operating agencies shall conduct programs and projects under this subpart in a manner consistent with the basic requirements of section 1120 of the Act.

(Authority: 20 U.S.C. 6394)

§§ 200.46–200.49 [Reserved]

Subpart D—Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk of Dropping Out

§ 200.50 Program definitions.

(a) The following definitions apply to the programs authorized in Part D, subparts 1 and 2 of Title I of the Act:

Children and Youth means the same as “children” as that term is defined in § 200.65(a).

(b) The following definitions apply to the programs authorized in Part D, subpart 1 of Title I of the Act:

Institution for delinquent children and youth means, as determined by the SEA, a public or private residential facility that is operated primarily for the care of children and youth who—

(1) Have been adjudicated to be delinquent or in need of supervision; and

(2) Have had an average length of stay in the institution of at least 30 days.

Institution for neglected children and youth means, as determined by the SEA, a public or private residential facility, other than a foster home, that is operated primarily for the care of children and youth who—

(1) Have been committed to the institution or voluntarily placed in the institution under applicable State law due to abandonment, neglect, or death of their parents or guardians; and

(2) Have had an average length of stay in the institution of at least 30 days.

Regular program of instruction means an educational program (not beyond grade 12) in an institution or a community day program for neglected or delinquent children that consists of classroom instruction in basic school subjects such as reading, mathematics, and vocationally oriented subjects, and that is supported by non-Federal funds. Neither the manufacture of goods within the institution nor activities related to institutional maintenance are considered classroom instruction.

(c) The following definitions apply to the local agency program authorized in Part D, subpart 2 of Title I of the Act:

Immigrant children and youth and Limited English Proficiency have the same meanings as those terms are defined in section 7501 of the Act,

except that the terms “individual” and “children and youth” used in those definitions mean “children and youth” as defined in this section.

Locally operated correctional facility means a facility in which persons are confined as a result of a conviction for a criminal offense, including persons under 21 years of age. The term also includes a local public or private institution and community day program or school not operated by the State that serves delinquent children and youth.

Migrant youth means the same as “migratory child” as that term is defined in § 200.40(d).

(Authority: 20 U.S.C. 6432, 6472)

§ 200.51 SEA counts of eligible children.

To receive an allocation under Part D, subpart 1 of Title I of the Act, an SEA must provide the Secretary with a count of children and youth under the age of 21 enrolled in a regular program of instruction operated or supported by State agencies in institutions or community day programs for neglected or delinquent children and youth and adult correctional institutions as specified in paragraphs (a) and (b) of this section:

(a) *Enrollment.* (1) To be counted, a child or youth must be enrolled in a regular program of instruction for at least—

(i) 20 hours per week if in an institution or community day program for neglected or delinquent children; or

(ii) 15 hours per week if in an adult correctional institution.

(2) The State agency shall specify the date on which the enrollment of neglected or delinquent children is determined under paragraph (a)(1) of this section, except that the date specified shall be—

(i) Consistent for all institutions or community day programs operated by the State agency; and

(ii) Represent a school day in the calendar year preceding the year in which funds become available.

(b) *Adjustment of enrollment.* The SEA shall adjust the enrollment for each institution or community day program served by a State agency by—

(1) Multiplying the number determined in paragraph (a) of this section by the number of days per year the regular program of instruction operates; and

(2) Dividing the result of paragraph (b)(1) of this section by 180.

(c) *Date of submission.* The SEA must annually submit the data in paragraph (b) of this section no later than January 31.

(Authority: 20 U.S.C. 6432)

§§ 200.52-200.59 (Reserved)**Subpart E—General Provisions****§ 200.60 Reservation of funds for State administration and school improvement.**

(a) *State administration.* An SEA may reserve for State administration activities authorized in section 1603 of the Act no more than—

(1) One percent from each of the amounts allocated to the State or Outlying Area under section 1002(a), (c), and (d) of the Act; or

(2)(i) \$400,000 (\$50,000 for the Outlying Areas), whichever is greater.

(ii) An SEA reserving \$400,000 under paragraph (a)(2)(i) of this section shall reserve proportionate amounts from each of the amounts allocated to the State or Outlying Area under section 1002(a), (c), and (d) of the Act.

(b) *School improvement.* (1) To carry out school improvement activities authorized under sections 1116 and 1117 of the Act, an SEA may reserve no more than .5 percent from each of the amounts allocated to the State or Outlying Area under section 1002(a), (c), and (d) of the Act.

(2)(i) An SEA shall have available from funds received under section 1002(f) of the Act or reserved under paragraph (b)(1) of this section no less than \$200,000 (\$25,000 for the Outlying Areas) to carry out school improvement activities.

(ii)(A) If funds made available for school improvement under section 1002(f) of the Act do not equal \$200,000 (\$25,000 for Outlying Areas), the SEA shall reserve funds in accordance with paragraph (b)(1) of this section.

(B) If the amount reserved under paragraph (b)(1) when added to funds received under section 1002(f), does not equal \$200,000 (\$25,000 for the Outlying Areas), the SEA shall reserve additional funds under section 1002(a), (c), and (d) as are necessary to make \$200,000 (\$25,000 for the Outlying Areas) available to the SEA.

(c) *Reservation from section 1002(a) funds.* In reserving funds for State administration and school improvement under section 1002(a) of the Act, an SEA shall—

(1) Reserve proportionate amounts from each of the State's basic grant, concentration grant, and targeted grant allocations; and

(2) Ensure that from the funds remaining for basic grants, concentration grants, and targeted grants after reserving funds for State administration and school improvement, no eligible LEA receives less than the hold-harmless amounts determined under § 200.25, except

when the amounts remaining are insufficient to pay all LEAs the hold-harmless amounts provided in § 200.25, the SEA shall ratably reduce each LEA's hold harmless allocation to the amount available.

(Authority: 20 U.S.C. 6303, 6513(c))

§ 200.61 Use of funds reserved for State administration.

An SEA may use any of the funds that it has reserved under § 200.60(a) to perform general administrative activities necessary to carry out, at the State level, any of the programs authorized under Title I of the Act.

(Authority: 20 U.S.C. 6513(c))

§ 200.62 (Reserved)**§ 200.63 Supplement, not supplant.**

(a) Except as provided in paragraph (c) of this section, a grantee or subgrantee under subparts A, C, or D of this part may use funds available under these subparts only to supplement the amount of funds that would be made available, in the absence of funds made available under subparts A, C, and D from non-Federal sources for the education of pupils participating in programs assisted under subparts A, C, and D and in no case may funds available under these subparts be used to supplant those non-Federal funds.

(b) To meet the requirement in paragraph (a) of this section, a grantee or subgrantee under subparts A, C, or D is not required to provide services under subparts A, C, or D through the use of a particular instructional method or in a particular instructional setting.

(c)(1) For purposes of determining compliance with paragraph (a) of this section, a grantee or subgrantee under subparts A or C may exclude supplemental State and local funds spent in any eligible school attendance area or eligible school for programs that meet the requirements of section 1114 or section 1115 of the Act.

(2) A supplemental State or local program will be considered to meet the requirements of section 1114 if the program—

(i) Is implemented in a school that meets the schoolwide poverty threshold for eligibility in § 200.8(b);

(ii) Is designed to upgrade the entire educational program in the school to support students in their achievement toward meeting the State's challenging student performance standards;

(iii) Is designed to meet the educational needs of all children in the school, particularly the needs of children who are failing, or most at risk of failing, to meet the State's challenging student performance standards; and

(iv) Uses the State's system of assessment to review the effectiveness of the program.

(3) A supplemental State or local program will be considered to meet the requirements of section 1115 if the program—

(i) Serves only children who are failing, or most at risk of failing, to meet the State's challenging student performance standards;

(ii) Provides supplementary services designed to meet the special educational needs of the children who are participating to support their achievement toward meeting the State's student performance standards that all children are expected to meet; and

(iii) Uses the State's system of assessment to review the effectiveness of the program.

(4) These conditions also apply to supplemental State and local funds expended under sections 1113(b)(1)(C) and 1113(c)(2)(B) of the Act.

(Authority: 20 U.S.C. 6322(b))

§ 200.64 Maintenance of effort.

(a) *General.* An LEA receiving funds under subparts A or C may receive its full allocation of funds under subparts A and C if it finds that either the combined fiscal effort per student or the aggregate expenditures of State and local funds with respect to the provision of free public education in the LEA for the preceding fiscal year was not less than 90 percent of combined fiscal effort per student or the aggregate expenditures for the second preceding fiscal year.

(b) *Meaning of "preceding fiscal year".* For purposes of determining maintenance of effort, the "preceding fiscal year" is the Federal fiscal year or the 12-month fiscal period most commonly used in a State for official reporting purposes prior to the beginning of the Federal fiscal year in which funds are available.

Example: For funds first made available on July 1, 1995, if a State is using the Federal fiscal year, the "preceding fiscal year" is Federal fiscal year 1994 (which began on October 1, 1993) and the "second preceding fiscal year" is Federal fiscal year 1993 (which began on October 1, 1992). If a State is using a fiscal year that begins on July 1, 1995, the "preceding fiscal year" is the 12-month period ending on June 30, 1994, and the "second preceding fiscal year" is the period ending on June 30, 1993.

(c) *Expenditures.* (1) *To be considered.* In determining an LEA's compliance with the maintenance of effort requirement, the SEA shall consider the LEA's expenditures from State and local funds for free public education. These include expenditures

for administration, instruction, attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities.

(2) *Not to be considered.* The SEA shall not consider the following expenditures in determining an LEA's compliance with the maintenance of effort requirement:

(i) Any expenditures for community services, capital outlay, and debt service; and

(ii) Any expenditures made from funds provided by the Federal Government for which the LEA is required to account to the Federal Government directly or through the SEA.

(Authority: 20 U.S.C. 6322(a))

§ 200.65 Definitions.

The following definitions apply to programs and projects operated under this part:

(a) *Children* means—

(1) Persons up through age 21 who are entitled to a free public education through grade 12; and

(2) Preschool children.

(b) *Fiscal year* means the Federal fiscal year—a period beginning on October 1 and ending on the following September 30—or another 12-month period normally used by the SEA for record-keeping.

(c) *Preschool children* means children who are—

(1) Below the age and grade level at which the agency provides free public education; and

(2) Of an age at which they can benefit from an organized instructional program provided in a school or educational setting.

(Authority: 20 U.S.C. 6315, 6511)

§§ 200.66–200.69 [Reserved]

Appendix—Analysis of Comments and Changes

(Note: This appendix will not be codified in the Code of Federal Regulations)

TITLE I—HELPING DISADVANTAGED CHILDREN MEET HIGH STANDARDS

Subpart A—Improving Basic Programs Operated by Local Educational Agencies

Standards, Assessment, and Accountability

Section 200.1 Contents of a State Plan

Comment: One commenter suggested that the regulations include the assurances or a reference to the

assurances required by section 1111(c) of Title I to be included in a State plan.

Discussion: The assurances in section 1111(c) relate to the additional responsibilities of States to support teaching and learning. The Department mailed to all States guidance for the development of a Title I State plan and for consolidated applications that include Title I. There is no need also to reference the assurances in the regulations.

Changes: None.

Comment: A number of commenters commented on the requirement in § 200.1(b)(2)(iii) of the regulations to identify the languages other than English for which yearly student assessments are needed but not available, and then develop assessments for all those languages according to a timetable established in the State plan. Several commenters contended that this requirement is unreasonable because it would be very expensive and time consuming. Moreover, in some cases, the assessment would apply only to a few students and might not meet the same standards of validity and reliability established for other assessments. Several commenters suggested that the development of these assessments in languages other than English be required only "to the extent practicable," tied to a minimum percentage of students that speak a certain language in a State, or only be required when instruction is actually given in that language. One commenter suggested that the requirement to develop a timetable for progress towards the development of these assessments is unreasonable because of the large number of languages spoken in a State. Another commenter suggested that a survey rather than a binding regulation be used to identify languages other than English that are spoken by Title I participating students.

On the other hand, several commenters supported this requirement. One commenter emphasized that States have a special obligation with regard to assessing limited-English proficient (LEP) students and must make every effort to develop assessments in languages that will yield accurate information. Another commenter suggested that more specific reporting requirements be included for identifying spoken languages and developing assessments. One commenter suggested that the regulations provide guidelines for inclusion of LEP students in State assessments and another commenter suggested that the regulations address access to assistance from the Department's Office of Bilingual

Education and Minority Languages Affairs.

Discussion: Section 1111(b)(3)(F)(iii) of Title I requires that each State's assessments provide for the inclusion of LEP students who shall be assessed, to the extent practicable, in the language and form most likely to yield accurate and reliable information on what such students know and can do to determine such students' mastery of skills in subjects other than English. Also, section 1111(b)(5) of Title I requires that each State plan identify the languages other than English that are present in the participating student population and indicate the languages for which yearly student assessments are not available and are needed.

Section 200.1(b)(2)(iii)(B) of the regulations requires each State plan to include a timetable for progress towards the development of these assessments to ensure that States match their needs for LEP assessments to a workable timetable that, over time, would improve participation of LEP students in high-quality, yearly assessments. The Secretary recognizes that there are many problems that must be addressed in the process, including issues involving time, expense, and usefulness of such assessments. To help address these issues, the Department's Office of Bilingual Education and Minority Languages Affairs and Office of Elementary and Secondary Education are developing nonregulatory guidance on options that States might consider in determining their own policy regarding the development of assessments in other languages and criteria for inclusion of LEP students.

Changes: None.

Comment: Two commenters suggested that Title I State plans include evidence that States used recognized professional and technical knowledge to develop challenging content standards and performance standards that may serve as benchmarks for student performance and as a means of issuing rewards and sanctions for schools and districts. Another commenter recommended that performance standards in Title I schools be comparable to those established for schools that serve middle- and upper-income families.

Discussion: Section 1111(b)(1)(D)(i) of Title I and § 200.2(a)(2)(i) of the regulations require States to demonstrate in their plan that they have established, or will establish, challenging content standards in academic subjects that specify what all children are expected to know and be able to do, contain coherent and rigorous content, and encourage the teaching of advanced skills to all

children. In addition, section 1111(b)(1)(D)(ii) of Title I and § 200.2(a)(2)(ii) of the regulations require States to establish challenging student performance standards that are aligned with the State's content standards and that include two levels of high performance and a third level of partial proficiency against which the progress of students and schools can be measured. Also, § 200.1(b)(1)(i)(B) of the regulations requires that a State plan include evidence that the State's procedure for setting student performance levels applies recognized professional and technical knowledge. Finally, provisions in sections 1116 and 1117 of Title I focus on recognized professional and technical knowledge as a basis for State systems for rewarding school districts and holding them accountable for progress. The Secretary believes these provisions adequately address the concerns of the commenters.

Changes: None.

Comment: Several commenters suggested that § 200.1(b)(2)(ii)(B) of the regulations, which requires the State plan to describe the transitional set of yearly statewide assessments the State will use to assess students' performance in mastering complex skills and challenging subject matter, be replaced with the statutory language in section 1111(b)(7) of Title I that, in the commenters' opinion, makes transitional assessments an option for States instead of a requirement. Two commenters expressed concerns that, because the regulatory provision only requires States to describe transitional assessments, it sends the message that States need not go through the approval process.

Discussion: Section 1111(b)(7) of Title I states that, if a State does not have final assessments that fully meet the statutory requirements, "the State may propose to use a transitional set of yearly statewide assessments that will assess the performance of complex skills and challenging subject matter." The Secretary does not believe that use of the word "may" in this context means that transitional assessments are optional. Rather, the Secretary believes that the word "may" permits the use of transitional assessments while final assessments are being developed, rather than requiring final assessments immediately. Moreover, because transitional assessments are part of the State plan, they are subject to peer review and approval under section 1111(d) of Title I.

Changes: None.

Section 200.2 State Responsibilities for Developing Challenging Standards

Comment: One commenter suggested that the regulations and guidance need to clarify that a State may adopt or approve locally developed standards and assessments under the Goals 2000 process or another State process for use in the Title I program. Another commenter recommended that the Department clarify whether State standards and assessments must be uniform throughout the State for Title I accountability purposes. This commenter suggested that past experience with LEAs establishing high school graduation standards resulted in high-level proficiencies for affluent communities and low-level proficiencies for poor communities.

Discussion: Section 1111(b)(1)(B) of Title I and §§ 200.2(b) and 200.4(c) of the regulations make clear that, if a State has State content standards or State student performance standards and an aligned set of assessments for all students developed under Title III of the Goals 2000: Educate America Act or another process, the State must use those standards and assessments, modified, if necessary, to conform with the requirements of section 1111 of Title I, to carry out Part A. Guidance for Goals 2000 requires that participating States develop or adopt challenging content and performance standards. It does not require that there be a single set of content or performance standards that are applied uniformly to every LEA within the State. A State may choose to develop or adopt model standards or criteria against which locally developed standards would be measured and approved.

Changes: None.

Section 200.3 Requirements for Adequate Progress

Comment: One commenter suggested that the phrase "except as provided in paragraph (c) of this section" should be deleted from § 200.3(a) of the regulations, suggesting that it appears to require States to develop two different definitions of adequate yearly progress. The commenter argued that, while Congress intended for States to use different measures in transitional and final assessment periods to determine adequate yearly progress, Congress also intended that States develop one standard for determining adequate yearly progress regardless of the assessment period.

Discussion: The Secretary believes that § 200.3 (a) and (c) of the regulations accurately reflect the statute and is necessary to give each State the

flexibility to develop and refine, over the next five years, its own approach for establishing high-quality assessments that will effectively assess learning. The definition of adequate yearly progress must be flexible to accommodate changes in State approaches to assessment. It does not make sense to require one standard for determining adequate progress when assessments used to measure that progress may be different during the transition period. The Secretary, however, does not expect States to establish lower expectations during the transitional period.

Changes: None.

Comment: One commenter suggested that references to adequate yearly progress in different regulatory sections are repetitive and could be confusing.

Discussion: State and local accountability for helping Title I children meet high standards is a central theme in the Title I statute. Adequate yearly progress plays a pivotal role in measuring accountability and it is part of several different statutory sections. The regulations clarify these statutory provisions, first with regard to the State plan and then in subsequent sections devoted to implementation. The Secretary believes that adequate yearly progress needs emphasis in the regulations to help maintain an overall focus on enabling children in Title I programs to meet the same high standards expected of all children.

Changes: None.

Comment: Two commenters argued that repetition of the statute regarding adequate yearly progress without additional explanation provides insufficient guidance to grantees.

Discussion: Section 200.3(b)(2) of the regulations provides that a State's determination of adequate yearly progress must be sufficiently rigorous to achieve the goal of helping all children served under Part A, particularly economically disadvantaged and LEP children, meet the State's proficient and advanced levels of performance within an appropriate timeframe. Each State has the flexibility to develop its own definition within its framework for standards and assessments. Standards and assessments will differ from State to State, along with definitions of adequate progress for each State's schools and LEAs. Some models and examples will be provided through policy guidance.

Changes: None.

Comment: One commenter suggested that adequate yearly progress be based on empirical data on or knowledge about growth in academic performance of schools and LEAs in the State in order to prevent States from arbitrarily using a benchmark.

Discussion: Section 200.3(b)(3) of the regulations requires that adequate yearly progress be defined in a manner that links progress primarily to performance on the State's assessment system under § 200.4, while permitting progress to be established in part through the use of other measures, such as dropout, retention, and attendance rates. The Secretary expects that a State, in developing its definition of adequate progress, would draw on knowledge and empirical data about the degree of progress that should be expected of effective schools.

Changes: None.

Comment: One commenter suggested that the regulations require SEAs and LEAs to make every effort to notify private schools about the SEA's definition of adequate yearly progress.

Discussion: The definition of adequate yearly progress that an SEA establishes will be the standard against which schools and LEAs will be measured as to whether they are enabling children to meet the State's challenging student performance standards. While private schools are not recipients of Title I funds, the Department will issue policy guidance that will, for the purpose of private school student Title I participants, address whether private school students served by Title I, but not private schools, are making adequate yearly progress toward meeting the standards.

Changes: None.

Comment: One commenter expressed concern regarding the statement in the preamble of the Notice of Proposed Rulemaking (NPRM) that the new Title I will shift from "an evaluation of how individual students are performing to an evaluation of how well schools and LEAs are helping students meet the challenging standards" since States will be assessing changes in the performance of different cohorts of students. The commenter argued that changes in test scores are likely to reflect differences in the groups of students instead of changes in school or LEA performance, particularly in poor urban districts with high rates of student mobility.

Discussion: The impact of the Title I program cannot be divorced from that of the regular program. This is particularly true as an increasing number of Title I schools develop schoolwide programs. Although the assessment systems operated by States and LEAs generally test only some grades, the Secretary believes that they will provide more revealing data than the current Chapter 1 testing system on the success of Title I schools and children served by Title I because they will be tied to high standards and will show how Title I

schools are doing compared to other schools in the district and State. In addition, Chapter assessments, which used gains of individual students, rather than a specified level of expected achievement, often resulted in minimal expectations of gains being set for Chapter 1 children. While the children improved, they were still performing far below a level needed for successful completion of school and employment. Classroom teachers will continue—as they do now—to assess individual children to determine their performance and improvement on an ongoing basis.

Changes: None.

Comment: One commenter requested that the regulations allow a State to define adequate progress in terms of progress made over either a one- or two-year period for the purpose of meeting the requirements of Title I accountability.

Discussion: States have the discretion to define adequate yearly progress over a one- or two-year period as long as the definition is sufficiently rigorous to achieve the goal that all children served under Part A, particularly economically disadvantaged and LEP children, meet the State's proficient and advanced levels of performance within an appropriate timeframe.

Changes: None.

Section 200.4 State Responsibilities for Assessment

Comment: One commenter suggested that the regulations inform SEAs and LEAs of their responsibilities regarding the assessment of participating private school children and specify that the expenses of conducting the assessment are allowable costs under Title I.

Discussion: The assessment requirements in the statute apply to private school students as well as public school students who participate in Title I. The Department will clarify in guidance that Title I funds may be used to assess private school children if they would not otherwise be participating in the State assessment. However, if private school children, in general, are included in the State assessment, Title I funds may not be used to pay for the assessment of those private school children participating in Title I.

Changes: None.

Comment: Many comments were received regarding the issue on which the Secretary specifically invited comments in the NPRM: whether accountability under Title I should be based on all subject areas for which a State has developed or adopted standards and assessments for all children or whether assessments in mathematics and reading/language arts

are sufficient for Title I accountability purposes as permitted in § 200.4(c)(1) of the regulations. Many commenters agreed with the regulations that accountability in math and reading/language arts was sufficient for Title I purposes. A number of other commenters, however, recommended that Title I schools be held accountable for all areas in which the State has developed standards and assessments in order to break the mold of Title I as a remedial reading and math program with lower expectations for the children served. A handful of commenters recommended a different resolution—that science be assessed in addition to reading and math to reflect the importance of that subject or that Title I accountability be based on those subject areas in which Title I services are provided.

Discussion: This issue continues to be one of the most difficult to resolve because each of the two major options has important advantages but also significant drawbacks. A major goal of the reauthorization is to redirect Title I from a low-level reading and math add-on program to a significant resource for high-poverty Title I schools to use to promote comprehensive schoolwide improvement in teaching and learning geared to the same challenging standards expected of all children. There is significant and legitimate concern that permitting Title I accountability to be limited to reading and math will stymie the shift toward comprehensive schoolwide reform, reinforce lower expectations for Title I schools, and send a message that other subjects are not important for children in high-poverty schools to learn. There is also the concern that this provision will lead States, LEAs, and schools to abrogate their responsibility for the performance of students served by Part A in all other subject areas besides reading and math. Extending Title I accountability to include all subjects in which a State has standards and assessments, including applying Title I assessment requirements to each of those subjects, however, also raises significant concerns about federal overreaching and the imposition of unwarranted and excessive burden. In addition, it risks creating additional disincentives to developing new State standards and limits the ability of States and LEAs to take advantage of innovations in performance assessments since, in the short run, many of those assessments will not be able to satisfy the Title I assessment requirements—at least in a timely and cost-efficient way.

Needing to give effect to the statutory language that a State must have

developed or adopted a set of assessments in at least mathematics and reading/language arts while not imposing additional requirements at the Federal level, the Secretary has retained the requirement that a State must use assessments that measure performance in math and reading/language arts to determine accountability under Part A. Nevertheless, the Secretary is concerned that Title I not continue to be viewed as solely a remedial program in math and reading. In addition, he wishes to afford appropriate flexibility to States as they begin to implement Goals 2000 plans. Therefore, the Secretary has revised § 200.4 to clarify that a State's assessments need not be focused solely on math and reading/language arts. Rather, a State may meet Title I's assessment requirements by developing or adopting assessments in other academic subjects as long as those assessments sufficiently measure performance in math and reading/language arts. For example, an assessment in an academic subject such as social studies may sufficiently measure performance in reading/language arts. Particularly at the secondary level, the Secretary believes it may be especially appropriate to measure performance in reading/language arts through assessments in content areas.

The Secretary emphasizes the importance of all children attaining high levels of performance in all core academic subjects. Limiting the focus of Title I accountability to math and reading/language arts in no way is intended to alter the overall responsibility of States, LEAs, and schools for the success of all students in the core academic subjects determined by the State. If a State has standards and assessments for all students in subjects beyond math and reading/language arts, the regulations do not preclude a State from including, for accountability purposes, additional subject areas, and the Secretary encourages them to do so.

Changes: Section 200.4(a)(1) of the regulations has been revised to clarify that a State may satisfy the requirement to develop or adopt a set of high-quality yearly assessments, including assessments that measure performance in at least mathematics and reading/language arts if the State has developed or adopted a set of high-quality yearly student assessments in other academic subjects that measure the performance in mathematics and reading/language arts. Likewise, § 200.4(e)(1)(i) has been revised to clarify that a State's transitional set of yearly statewide assessments may be assessments in academic subjects other than

mathematics and reading/language arts that measure performance in mathematics and reading/language arts. References to these clarifications are reflected in § 200.1 regarding State plan requirements and throughout § 200.4 in provisions related to the development or adoption of State assessments.

Comment: A number of commenters proposed that some or all of the criteria applicable to the final assessments under Title I be applied to the transitional assessments. The commenters were concerned that, without additional transitional requirements, States would be relieved of accountability during the entire reauthorization period. A number of commenters recommended that the regulations require all, or at least one, transitional assessment to be valid and reliable and consistent with existing professional and technical standards. A number of commenters also proposed that disaggregated data be required during the transition period, particularly for LEP children and poor children and for schoolwide programs. Other transitional assessment criteria that commenters recommended include: that all students, including LEP, minority, and poor students, be included in transitional assessments; that transitional assessments be aligned with State standards once these standards are developed; that LEP criteria for assessments be provided; that there be individual student and interpretive reports; and that parents receive the achievement information they need to be involved in the education of their children. In addition, three commenters supported applying all of the requirements of the final assessments to the interim assessments, although one would be willing to exempt specific technical requirements that need to be field tested, while the two others would only grant narrow exceptions after careful examination.

Discussion: Section 1111(a)(3)(7) of Title I allows States developing final assessments to use a transitional set of yearly statewide assessments that assesses the performance of complex skills and challenging subject matter. The Act itself contains no other criteria for these assessments and § 200.4(e) of the regulations only clarifies that these assessments must be at least in mathematics and reading/language arts and be administered during the grade spans required of the final assessments. Neither the statute nor the legislative history supports the application of other requirements on transitional assessments. In fact, the Secretary believes that requiring transitional assessments to meet a host of

requirements, particularly those relating to validity, reliability, and disaggregation, may end up frustrating Title I's longer-term goal of promoting high-quality innovative assessments aligned with challenging standards. Developing new, high-quality assessments that conform with these requirements will require time—time that the transition period is precisely designed to provide. If the same criteria are applied to transitional assessments as to the final assessments, this purpose would be nullified and States, in effect, may have to develop two systems.

Title I and the regulations, however, clearly intend that all children within the grades tested during the transition period participate in the assessment. Moreover, section 1111(b)(7)(B) of Title I and § 200.3(c) make clear that LEAs and schools must be identified for improvement during the transitional period based on accurate information about the academic progress of each such local education agency and school.

Changes: Section 200.4(e)(1)(iii) has been added to clarify that transitional assessments must include all students in the grades assessed.

Comment: One commenter recommended that the reliability and validity of assessments used to evaluate Title I programs be established and described for each specific purpose or use of the scores. Another commenter emphasized the importance of conducting and reporting on validation studies to ensure that accountability decisions are not based on flawed results, and another suggested that the Department make clear that following a particular validation process is not required.

Discussion: Section 200.4(b)(3)(i) of the regulations requires that each State's assessments be used for purposes for which they are valid and reliable and to be consistent with relevant, nationally recognized professional and technical standards for those assessments. The Secretary believes that this provision adequately addresses the commenters' concerns yet does not require a particular validation process.

Changes: None.

Comment: One commenter expressed concern that the individual, group, total school, and district reports required by the regulations will be subject to error from several sources, including measurement and sampling error: many schools will have too few students in some of the groups for which disaggregated reporting is required to provide reliable estimates of group performance (let alone reliable estimates of change). The requirements also overlook that some State assessment

programs are designed to provide school-level rather than student-level estimates of performance. At a minimum, the commenter recommends: adding language in § 200.4(b)(9) requiring that individual student reports include estimates of measurement error for the scores and any limitations of the results to permit accurate interpretation; adding language in § 200.4(b)(10) that reports of disaggregated data should be modified when the results would be unreliable or invalid due to inadequate numbers of students in the categories; or permitting a school to report annual results in a three-year rolling average to reflect that estimates from individual years contain too much error to be interpreted in isolation.

Discussion: Section 200.5(a)(2)(iii)(C) of the regulations clarifies that disaggregated data should be reported to the public only when those data would be statistically sound. It is appropriate for a State to have considerable flexibility in determining the content of its assessment reports so long as those reports conform with the requirements of the law.

Changes: None.

Comment: One commenter described some of the difficulties involved in disaggregating data by economically disadvantaged children: the definition is subject to various interpretations; schools currently do not collect these data in disaggregated form; collection of such data would be very difficult; and current USDA guidelines limit the use of individual student eligibility free and reduced price lunch data to USDA purposes only. Another commenter, reinforcing this position, suggested that the regulations provide as much flexibility as possible regarding disaggregation of data by poverty status.

Discussion: The Secretary recognizes that there are difficulties involved in complying with this requirement. However, the need to determine how well Title I is assisting poor children to meet challenging standards is acute.

Changes: None.

Comment: One commenter suggested deleting the phrase "in the grades being assessed" from § 200.4(b)(7)(i) of the regulations on the grounds that it may cause unnecessary problems for students who are placed in "ungraded" classes, or who have disabilities and are not in the age-appropriate grade. According to the commenter, this phrase is not necessary to clarify that students in all grades need not be assessed and might create perverse incentives for schools wanting to exclude students from assessments. Another commenter suggested that § 200.4(b)(7)(i) of the regulations be

modified to read "participation in the assessment of all students, including students served under this subpart, in the grades being assessed."

Discussion: Inclusion of the phrase "in the grades being assessed" in § 200.4(b)(7)(i) of the regulations is necessary to clarify that assessments used for Title I purposes do not have to assess all students in a school or all students served by Title I, but only those students in the specific grades being assessed. Within the grades being assessed, however, students being served under Title I must be included in the assessment.

Changes: None.

Comment: One commenter stated that the requirement in § 200.4(b) of the regulations that the "same assessments be used to measure the performance of all children" should be relaxed to permit appropriate modifications for children with diverse learning needs. The commenter recommended regulatory language stating that "reasonable adaptations may require modifications in item format, item content, test structure, administrative procedures and time limits that result in a different test form and/or procedure." The commenter would also require those modifications to be described and the validity and reliability of those assessments estimated and reported. Another commenter suggested that the regulations state that all students, including those who are limited English proficient, have a disability, or otherwise might not always be included in State and local assessment systems, be included under Title I assessment requirements, with appropriate modifications.

Discussion: Section 111(b)(3)(A) of Title I and § 200.4(b)(1) of the regulations make clear that assessments used for Title I purposes must be the same assessments used to measure the performance of all children, if the State measures the performance of all children. These provisions remedy the situation under Chapter 1, in which a separate testing system was often used to assess only Chapter 1 participants. Section 200.4(b)(7)(i) of the regulations makes clear that State assessments must provide for the participation of all students in the grades being assessed. Section 200.4(b)(7)(ii) further clarifies that all students includes students with diverse learning needs. However, it also makes clear that reasonable adaptations and accommodations must be made for students with diverse learning needs so that the State's assessment measures the achievement of those students relative to the State's content and performance standards. Moreover, under

§ 200.4(b)(7)(iii), children with limited English proficiency must be assessed, to the extent practicable, in the language and form most likely to yield accurate and reliable information on what those students know and can do to determine the students' mastery of skills in subjects other than English. The Secretary believes these provisions effectively address the commenters' concerns.

Changes: None.

Comment: Several commenters focused specifically on § 200.4(b)(7)(iii) concerning the assessment of limited English proficient children. One commenter recommended modifying this section to make clear that the State must make every effort to use or develop linguistically accessible assessment measures and develop appropriate modifications to test formats and administration procedures for LEP students assessed in English. Another commenter recommended deleting "to the extent practicable" from § 200.4(b)(7)(iii)(A) to ensure the assessment of all students without regard to primary language.

Discussion: The Secretary believes that § 200.4(b)(7) of the regulations, which replicates, by and large, the language in section 111(b)(3)(F) of Title I is clear in its requirements that all students participate in the assessments, that reasonable adaptations and accommodations be provided where necessary, and that children with limited English proficiency be assessed, to the extent practicable, in the language and form most likely to yield accurate and reliable information on what those students know and can do to determine the students' mastery of skills in subjects other than English.

Changes: None.

Comment: Several commenters expressed concerns about the addition of the phrase "to meet this requirement" in § 200.4(b)(7)(iii)(B) of the regulations. To some, it suggests that States can meet the requirement that they include LEP students in their assessment by making every effort to use linguistically accessible assessment measures even though these are two distinct and important provisions. To another commenter, the provision gives the impression that assessment of LEP students is required only when assessments are available in the students' native languages. Recommendations included either deleting the phrase, or substituting the words "in meeting" for "to meet" in § 200.4(b)(7)(iii)(B).

Discussion: The Secretary agrees with the commenter that, as proposed, the provision did not make clear the

requirement for including LEP students in the State assessments. In meeting this requirement, States must make every effort to develop linguistically accessible assessments. However, even without such assessments, LEP students must be included in the State's assessments.

Changes: Section 200.4(b)(7)(iii)(B) has been modified by deleting the phrase "to meet this requirement" and inserting "in meeting this requirement."

Comment: One commenter suggested that clarification is needed in § 200.4(b)(8) of the regulations regarding determining of those children from mobile families who have attended schools in the LEA for "a full academic year." Specifically, in districts operating year-round programs, the commenter suggested that students who have attended school in the district for the amount of time required of any particular student must be included in determining the progress of the LEA.

Discussion: The Secretary agrees that students from mobile families must be included in determining an LEA's progress if they have attended school in that LEA for the period of time necessary to meet the State's annual requirement for compulsory education.

Changes: None.

Comment: One commenter recommended that the regulations expressly state that group-administered, norm-referenced tests below grade 4 are inappropriate. The same commenter recommended that LEAs, not SEAs, select the particular approaches to assess children's school performance during the first 3-4 years of elementary school.

Discussion: Under Title I, States are provided with the responsibility of developing assessments aligned with State-developed standards. LEAs may also implement any additional assessments. The Secretary, therefore, believes it is inappropriate to prescribe the type of assessments that SEAs and LEAs should use.

Changes: None.

Section 200.5 Requirements for school improvement

Comment: One commenter requested that §§ 200.5 and 200.6 of the regulations be expanded to cover the numerous interrelated and complex provisions of Title I on which no regulations for program improvement have been included.

Discussion: The Secretary is committed to issuing regulations only where absolutely necessary and, when regulating, to promoting flexible approaches to meeting the requirements of the law. As a result, the Secretary has

not expanded the provisions on school improvement through regulations. The Secretary intends, however, to issue nonregulatory guidance on these provisions, including examples to illustrate possible approaches to school improvement.

Changes: None.

Comment: One commenter suggested that, when an LEA reviews a targeted assistance school to determine if the school has made adequate progress, the State should have the flexibility to decide whether to include only students served by Title I or all students who participate in the assessment.

Discussion: Section 1116(c)(1)(B)(ii) of Title I states that an LEA shall identify for school improvement any school served under this part that has not made adequate progress as defined in the State's plan for two consecutive school years, except that, in the case of a targeted assistance school, such school may be reviewed on the progress of only those students that have been or are served under this part. Additionally, section 1116(d)(3)(A)(i) of Title I provides a State some flexibility in reviewing the progress of an LEA. In a State's review of an LEA, schools served by the LEA that are operating targeted assistance programs may be reviewed on the basis of the progress of only those students served under Part A.

Changes: None.

Comment: One commenter suggested that language be added to § 200.5(a)(2) to include parental involvement in the annual review of the progress of each school for school improvement since parental involvement is a key theme in Title I of the Act.

Discussion: The Secretary strongly supports parental involvement efforts and participation by parents in their children's learning process and believes that such participation is crucial to the children's success in school. However, the progress of a school is measured on the basis of student achievement, not the process to elicit that achievement. Section 1118 of Title I contains comprehensive parental involvement requirements, including a requirement for the yearly review of the effectiveness of the parental involvement policy in increasing the participation of parents.

Changes: None.

Comment: One commenter supported the Secretary's position in § 200.5(a)(2)(iii)(c) that in conducting its annual review, an LEA must report disaggregated data to the public only when those data are statistically sound. This commenter explained that reporting data that are not statistically sound will mislead policymakers and

the public regarding how well schools are performing.

Discussion: The Secretary supports reporting data to teachers and other staff, parents, students, and the community annually so that this information may be used to determine the effectiveness of the program and for school improvement purposes. However, informed decisions can be made only if the data are accurate and statistically sound.

Changes: None.

Schoolwide Programs

Section 200.8 Schoolwide Program Requirements

Comment: Some commenters recommended that § 200.8(a)(1) of the regulations be changed to indicate that the decision to operate a schoolwide program is an LEA decision or an LEA decision after consultation with school-level staff as opposed to a school decision after consultation with the LEA. According to one of the commenters, this change would respect the role of the LEA and, at the same time, reinforce the concept that schoolwide programs should be undertaken in a building on a voluntary basis.

Discussion: Both section 1114 of Title I on schoolwide programs and section 1115 of Title I on targeted assistance schools emphasize greater decisionmaking authority at the school level so that schools, in consultation with their LEA, determine how to use their Title I funds in ways that best meet the needs of their students. Section 1114 contains many provisions addressing a school's responsibility for conducting a schoolwide program should the school choose to operate one. By emphasizing that an eligible school makes the decision to operate a schoolwide program, in consultation with its LEA, § 200.8(a)(1) recognizes that schoolwide programs will be successful only when the school community is fully behind that decision and that accountability at the school level must be coupled with decisionmaking authority.

Changes: None.

Comment: One commenter requested that the following language be added to § 200.8(a)(2)(ii): "If a district selects a provider of School Support from another entity outside of the statewide system, it must be subject to the State Validation System before the SWP plan is approved by the local board."

Discussion: A State may choose to include, as part of its State support system addressed in section 1117 of Title I, provisions allowing its LEAs to select technical assistance providers

other than those provided by the State. Because the responsibility is placed upon a State to design its system of support, this is an individual State decision.

Changes: None.

Comment: Numerous comments were received on § 200.8(c) of the regulations combining other Federal education program funds to support schoolwide programs and exempting those funds from their specific program requirements. Two commenters viewed the proposed regulations as going beyond what Congress authorized and did not believe that the ability to combine funds exempts schools from other Federal education laws and regulations. Several commenters asked that the authority to combine funds not extend to Title VII bilingual programs. They also stated that § 200.8(c)(ii)(B), which requires only that the intent and purposes of Federal education programs whose funds are combined be met, is too vague and will allow LEAs to evade the intent of Congress. Some commenters suggested deleting § 200.8(c)(3)(i)(A) because they believe that provision misconstrues the statute by exempting "programs" as opposed to the statutory term "provisions." Other commenters suggested deleting all references to "and any other Federal program included under (c) in this section." One commenter expressed concern that protection of services children receive will be eliminated, especially if parents are not specifically informed about funding and program design.

Discussion: One of the most promising changes in the recent reauthorization of Title I is the expansion of schoolwide programs to include other Federal programs. A schoolwide program permits a school to use funds under Part A of Title I to upgrade the entire educational program of the school and to raise academic achievement for all children in the school, in contrast to categorical programs in which Federal funds may generally be used only for supplementary educational services for specific target populations.

The Secretary strongly believes that schoolwide programs hold the greatest promise for raising the achievement of all children in high-poverty schools. He also believes the success of schoolwide programs depends on the ability of the schools to combine other Federal education program funds along with Part A funds and State and local funds to support their overall instructional programs. This authority affords a schoolwide program school significant flexibility to serve more effectively all

children in the school and their families through comprehensive reforms of the entire instructional program, rather than by providing separate services to specific target populations.

The Secretary emphasizes that a school with a schoolwide program must address the needs of all children in the school, particularly the needs of children who are members of the target population of any other Federal education program that is included in the schoolwide program and that accountability is based on how well children in the target populations perform with respect to State standards. The Secretary has not included additional provisions in the regulations because he does not want to impede a schoolwide program school from serving all children through comprehensive reforms of its entire instructional program.

Changes: None.

Comment: One commenter stated that § 200.8(c)(3)(ii)(A)(8) and (f)(1)(iii) and (2) of the regulations concerning application of the supplement, not supplant requirement in schoolwide program schools are contradictory and confusing.

Discussion: Consistent with section 1114(a)(4)(B) of Title I, § 200.8(c)(3)(ii)(A)(8) of the regulations does not relieve an LEA or school operating a schoolwide program from applicable supplement, not supplant requirements. On the other hand, consistent with section 1114(a)(3), § 200.8(f)(1)(iii) and (2) exempts a schoolwide program school from providing supplemental services to eligible children, although it requires the school to demonstrate that Part A funds and any other Federal education funds that are combined for use in a schoolwide program supplement the total amount of funds that would, in the absence of such funds, be made available to the school from non-Federal sources. Thus, the regulations do not contradict one another. Rather, paragraph (f) clarifies paragraph (c): schoolwide program schools must comply with the modified supplement, not supplant requirements in section 1114(a)(3) of Title I and § 200.8 (f)(1)(iii) and (2) of the regulations.

Changes: None.

Comment: One commenter suggested that § 200.8(e)(1)(iv)(A)(2) of the regulations conform to the statutory requirement for the collection of disaggregated achievement and assessment results, which the commenter argues is required during the transitional assessment period.

Discussion: Section 1111(b)(3)(I) of Title I requires that final assessment

systems enable assessment results to be disaggregated. Section 1111(b)(7), which authorizes transitional assessments, does not include the requirement for disaggregation. Therefore, disaggregating assessment data for schoolwide programs during the transitional assessment period is not required by the statute. Moreover, the Secretary believes that requiring disaggregation during the transition period would frustrate Title I's long-term goal of promoting high-quality, innovative assessments aligned with challenging standards. If there are data that can be disaggregated in a schoolwide program, an LEA may certainly disaggregate that data during the transitional assessment period. Furthermore, the Secretary encourages LEAs and schools to use information available from other sources such as teacher-made assessments to determine the progress of intended beneficiaries in the programs included in the schoolwide program.

Changes: None.

Comment: One commenter requested that language be added to § 200.8(d)(8)(C) of the regulations permitting Title I funds to be used to conduct parent-teacher conferences in parents' native language in order to help LEP parents be more involved.

Discussion: The use of Title I funds to conduct parent-teacher conferences, including in a parent's native language, is an allowable and appropriate use of Title I funds. Given that many funding sources may be combined to conduct schoolwide programs, any of the funding sources, including Title I, could provide such language-related services. The Department is planning to issue guidance on schoolwide programs that covers additional issues, including this one. Furthermore, the Department is consulting with many groups with knowledge on and experience with issues concerning the specific needs of children and their parents with limited-English proficiency and will produce specific guidance on activities related to working with LEP children and their families.

Changes: None.

Comment: One commenter requested that § 200.8(c)(3)(ii)(B)(1) of the regulations concerning a special rule for migratory children in schoolwide programs be expanded to include students from homeless, highly mobile, and isolated families.

Discussion: Part C of Title I includes a specific provision with respect to migratory children in schoolwide programs, which is reflected in the regulations. There is no authority to

expand that provision to cover other target populations.

Changes: None.

Comment: One commenter requested that § 200.8(c)(3)(ii)(B)(1)(i) of the regulations be revised to refer to parents of migratory children "and/or" organizations representing those parents.

Discussion: The Secretary agrees that an LEA may consult with both parents of migratory children and organizations representing those parents. These parties are not mutually exclusive.

Changes: The Secretary has revised § 200.8(c)(3)(ii)(B)(1)(i) to include "or both."

Comment: One commenter recommended that § 200.8(d)(8)(ii)(A) and (B) of the regulations be deleted, arguing that the language on Individualized Education Programs (IEP) is an unnecessary clarification that unfairly targets an effective strategy that helps children with special needs improve their academic achievement.

Discussion: This provision is included to prevent misinterpretation of the statutory provision that requires a schoolwide program to discuss with parents what the school will do to help students meet the standards and identify additional assistance that may be available. Section 200.8(d)(8)(ii)(A) of the regulations makes clear the statute does not require that IEPs, like those required under the Individuals with Disabilities Education Act, be developed for children not served in special education. This clarification does not, however, prohibit IEPs from being developed should a schoolwide program school elect to do so.

Changes: None.

Comment: One commenter suggested that the Secretary focus on curriculum and instruction in its guidance to States, school districts, and schools regarding the development of schoolwide plans. The commenter also suggested that schools be required to explain how and why they designed their instructional program and to describe any evidence that their approach has been researched and evaluated in peer-reviewed publications. In addition, the commenter suggested that the Secretary ask schools to explain how their schoolwide programs will help students master the knowledge and skills outlined in the State content standards. Further, the commenter suggested that the Secretary urge schools to include a timetable in their schoolwide plans showing what changes will take place immediately and what other changes will follow.

Discussion: Section 1114(b)(1) of Title I contains the components required of a

schoolwide program, including, among other things, schoolwide reform strategies that provide opportunities for all children to meet the State's proficient and advanced levels of student performance, that are based on effective means of improving the achievement of children, and that use effective instructional strategies.

Further, section 1114(b)(2) provides that a school operating a schoolwide program must develop a comprehensive plan for reforming the school that incorporates the components required in section 1114(b)(1). Therefore, the statute already sufficiently ensures that the schoolwide program plan include information on those areas critical to the improvement of teaching and learning.

Changes: None.

Participation of Eligible Children in Private Schools

Section 200.10 Responsibilities for Providing Services to Children in Private Schools

Comment: Two commenters suggested that § 200.10(a) of the regulations be augmented to clarify that timely and meaningful consultation must occur before decisions are made that affect the opportunities of participating private school children and that a unilateral offer of services would not suffice.

Discussion: Section 1120(a) of Title I requires an LEA to provide equitable services to eligible private school children after timely meaningful consultation with private school officials. Section 1120(b) further elaborates on what constitutes timely and meaningful consultation. Paragraph (b)(2) requires consultation to occur "before the (LEA) makes any decision that affects the opportunities of eligible private school children to participate" in Part A programs. These statutory provisions clearly preclude an LEA from making a unilateral offer of services or consulting after services are already being provided, and no further regulations are needed.

Changes: None.

Comment: Several commenters argued that the definition of eligible students in section 1115 of Title I does not require eligible Title I children attending private schools to reside in a participating attendance area as stated in § 200.10(b)(1) of the regulations. They argued that the poverty of a private school is reflective of a larger area such as an entire LEA and, therefore, the attendance areas of the public school system are not relevant.

Discussion: Section 1113(a) of Title I defines a public school attendance area as the geographic area in which children

who are normally served by the school reside. To be eligible for Title I services, a school attendance area must have a higher percentage of poverty than the LEA as a whole. The degree of poverty in a private school is irrelevant because private schools do not participate in Title I. Rather, private school children are eligible because they reside in a public school attendance area that is participating in Title I; thus, they would have been eligible for services had they attended the public school. In essence, Title I puts private school children in the same place they would have been in had they attended a public school.

Changes: None.

Section 200.11 Factors for Determining Equitable Participation of Children in Private Schools

Comment: Several commenters commented on § 200.11(a)(2)(ii) (A)-(B) of the regulations, which provides two options to an LEA for determining which eligible private school children to serve. One commenter suggested that a combination of the options should be allowed as a third option. Another commenter recommended that paragraph (A), which permits the pooling of funds generated by poor private school children in all participating areas, be deleted because it provides greater flexibility in serving private school children than exists for serving public school children. Other commenters recommended that paragraph (B) be deleted, arguing that it is administratively burdensome and appears to directly benefit private schools.

Discussion: The regulations provide two options "or utilizing the funds allocated on the basis of the number of low-income children who reside in participating Title I attendance area. In consultation with private school officials, an LEA may select one option or combine the options to best serve eligible private school children. Thus, an LEA does not need to select the option in paragraph (B) if the LEA believes it is administratively burdensome. The Secretary does not believe the option for pooling funds in paragraph (A) favors private school children. Rather, it adds needed flexibility, particularly because the number of poor children who reside in participating public school attendance areas and attend a particular private school may be so small that the funds those children generate are not commensurate with the educational needs of eligible children in that school.

Changes: None.

Comment: One commenter suggested that § 200.11(b)(2)(iii) of the regulations

be modified to require that private school children be provided with an opportunity to participate in Title I in a manner that addresses the particular needs of the private school children.

Discussion: Section 1120 of Title I clearly provides private school children an opportunity to participate in Title I in a way that addresses their particular educational needs. It requires that equitable services be provided and requires an LEA to consult with private school officials about how private school children's needs will be identified and what services will be provided. Moreover, because there is no longer a districtwide needs assessment, the needs of private school children can be determined independently from the needs of public school children.

Changes: None.

Section 200.13 Requirements Concerning Property, Equipment, and Supplies for the Benefit of Private School Children

Comment: Several commenters recommended that § 200.13(d) of the regulations be revised to afford LEAs discretion in deciding whether to remove equipment and materials no longer needed to provide services to private school children if there is the possibility that the program would be resumed in a subsequent year. The commenters explained that new zoning ordinances in many districts make it very expensive, once portable units, for example, are removed, to resituate the units.

Discussion: The Secretary recognizes that, under the new law, services to eligible private school children may differ from those provided under Chapter 1. The Secretary has attempted in § 200.28 of the regulations to provide maximum flexibility to ease the transition to the new law. Consistent with that flexibility, however, if equipment is no longer needed to provide equitable services to private school children, it must be removed as required in § 200.13(d).

Changes: None.

Capital Expenses

Section 200.16 Payments to LEAs for Capital Expenses

Comment: Two commenters recommended amending § 200.16(a)(1)(i)(B) of the regulations to also allow capital expenses to pay for costs that would be incurred to improve the quality of services provided to private school students.

Discussion: Capital expenses funds may pay the costs of noninstructional goods and services needed to improve

the quality of equitable services provided to private school children. The Secretary did not amend the regulations because these costs would be covered under § 200.16(a)(1)(i)(A)—that is, capital expenses an LEA "is currently incurring" to provide equitable services.

Changes: None.

Comment: One commenter suggested that § 200.16(a)(1)(ii) of the regulations be revised to allow an LEA to apply for a payment to cover capital expenses it incurred in prior years for which it has not been reimbursed "only" if the LEA demonstrates that its current needs for capital expenses have been met.

Discussion: The Secretary believes that the regulatory language in § 200.16(a)(1)(ii) clearly does not permit payments for previously incurred capital expenses if the LEA cannot demonstrate that its current needs for capital expenses have been met.

Changes: None.

Section 200.17 Use of LEA Payments for Capital Expenses

Comment: One commenter supported the use of capital expenses for reimbursement of costs in prior years but suggested that such reimbursement not be contingent upon approval by the SEA.

Discussion: Section 200.16(a)(1)(ii) of the regulations makes clear that an LEA may apply to the SEA for capital expense funds to cover expenses it incurred in prior years only if the LEA has demonstrated that its current needs for capital expenses have been met. Section 200.17 reflects this provision.

Changes: None.

Procedures for the Within-State Allocation of LEA Program Funds

Section 200.20 Allocation of Funds to LEAs

Comment: One commenter asked why Sections 1124(a)(2) and 1125(d) of Title I and § 200.20(b)(2)(ii)(B) of the regulations concerning direct allocations to LEAs require the SEA to establish appeal procedures for an LEA dissatisfied with the determination by the SEA when section 14401(c) of the ESEA prohibits the Secretary from waiving any statutory or regulatory requirement relating to the allocations or distribution of funds to States, LEAs, or other recipients of funds under the ESEA.

Discussion: Section 200.20(b)(2)(ii)(B) of the regulations follows the statute, which requires that a State applying for authorization to allocate funds directly to LEAs without regard to counties assure that its SEA has established procedures through which LEAs

dissatisfied with the SEA's determination may appeal directly to the Secretary. In reviewing an LEA's appeal, the Secretary would consider whether the SEA's allocation procedures in general comply with the statute and regulations. The Secretary could not waive any of the statutory or regulatory requirements related to allocating funds, however.

Changes: None.

Comment: One commenter requested clarification of the provision in § 200.20(c) of the regulations concerning LEAs that contain two or more counties in their entirety. In the case of New York City, for example, the SEA is required to allocate funds to each county within the city school system as if each county were a separate LEA. The commenter asked whether the LEA or SEA could adjust individual county allocations within New York City to account for poor children who live in one county but attend school in another county. The commenter believes that the Title I allocation procedures would be more equitable if adjustments could be made to county allocations in cases where poor children who live in one county attend school in another county, even though those poor children are in the same LEA.

Discussion: The situation described by the commenter is similar to that provided for in section 1126(b) of Title I. Section 1126(b) allows an SEA, in cases where an LEA provides free public education for children who reside in the school district of another LEA, to adjust the amount of grants among the affected LEAs. Because the statute requires an SEA to treat the individual counties within a single school district as separate LEAs for allocation purposes, section 1126(b) authorizes an SEA to adjust the counties' amounts because they are treated as LEAs. Therefore, the SEA may adjust amounts made available to the counties within a single LEA to account for poor children who live in one county but attend school in another county.

Changes: None.

Comment: Because of the disruption the "one LEA with two or more counties" provision in § 200.20(c) of the regulations will cause the New York City school system, one commenter recommended that the regulations allow such LEAs to use current Chapter 1 allocation procedures for two more years in order to minimize disruption to ongoing projects and make the transition to the new law smoother.

Discussion: Section 3(a)(1)(A) of the LISA provides that Title I shall take effect on July 1, 1995. The Secretary

does not have authority to delay this effective date.

Changes: None.

Section 200.25 Applicable Hold-Harmless Provisions

Comment: One commenter opposed the provision in § 200.25(c) of the regulations that requires an LEA to be eligible for basic, concentration, or targeted grants in order for the respective hold-harmless provisions to apply. The commenter believes this provision penalizes poor students with educational needs who live in wealthy districts.

Discussion: Sections 1124 (basic grants), 1124A (concentration grants), and 1125 (targeted grants) of Title I all contain requirements limiting the eligibility of certain LEAs to receive grants under those sections. The hold-harmless provisions in section 1122(c) of Title I apply to "the amount made available to each local educational agency" under sections 1124, 1124A, and 1125. If an LEA is not eligible, no funds would be "made available" to it and, thus, the hold-harmless protection would not apply. These sections help implement the statute's purpose to target funds more effectively on LEAs with the highest concentrations of poverty and are supported by research findings that show children from low-income families attending schools in relatively wealthy school districts tend on average to do better academically than similar children attending schools in school districts with high concentrations of poverty.

Changes: None

Procedures for the Within-District Allocation of LEA Program Funds

Section 200.27 Reservation of Funds by an LEA

Comment: One commenter asked for clarification about how the reservation of funds provision in § 200.27 of the regulations works with regard to calculating 125 percent of an LEA's allocation per poor child and how this provision affects an LEA that serves only attendance areas or schools with poverty rates of 35 percent or more.

Discussion: Section 1113(c)(2)(A) of Title I requires that, in allocating funds to eligible attendance areas or schools, an LEA provide an amount per poor child for each area or school that is at least 125 percent of the amount per poor child that the LEA received under Part A of Title I. Thus, an LEA must calculate 125 percent of its allocation per poor child based on its total allocation before reserving any funds. An LEA that serves only attendance

areas or schools with poverty rates of 35 percent or more is not subject to this requirement.

Changes: A change has been made. The Secretary has amended § 200.27(b)(1) of the regulations to make clear that an LEA subject to the 125 percent rule must calculate its minimum per pupil allocation before the LEA reserves any funds.

Comment: One commenter believed the reference to capital expenses in § 200.27(c) of the regulations is incorrect because it is a separate Title I program that the SEA subgrants to LEAs. Several other commenters recommended that a separate provision be included for reserving funds for capital expenses.

Discussion: Although capital expenses is a separate Title I program, LEAs must apply to the SEA for these funds. There is no guarantee an LEA that applies will receive capital expense funds or that the amount received will be enough to cover all capital expense costs associated with implementing alternative delivery systems needed to serve private school students and comply with the requirements of *Aguilar v. Felton*. Thus, an LEA may still need to reserve administrative funds for the costs of noninstructional goods and services incurred because of the *Felton* decision.

Change: A change has been made. The Secretary has added language in § 200.27(c) of the regulations to make clear that an LEA may reserve off the top of its Part A allocation funds necessary to pay those capital expenses not reimbursed under § 200.16.

Section 200.28 Allocation of Funds to School Attendance Areas and Schools

Comment: Several commenters stated that requirements to allocate funds to schools based on poverty rather than educational need undermine the original purpose of Title I by making it a poverty program rather than an educational program. The commenters argued that basing Title I allocations on the number of poor children residing in an eligible school attendance area adversely affects the number of educationally needy public and private school students who can participate.

Discussion: Section 1113(c) of Title I requires an LEA to allocate funds to participating attendance areas and schools based on the number of children from low-income families. Congress enacted this provision to target funds on areas with the highest concentrations of poverty, recognizing the close relation between high concentrations of poverty and low academic achievement and realizing that successful schools have been penalized in the past by losing

Title I funds because their children made academic gains. Even though funds are allocated to participating areas and schools on the basis of poverty, however, educationally needy children in those schools do not need to be poor to receive services. Title I continues to be an education program.

Changes: None

Comment: One commenter stated that the Secretary should not regulate how LEAs distribute funds to schools with poverty rates of at least 35 percent. According to the commenter, the decision on how to allocate funds in such cases should be an LEA decision; regulations in this area represent a Federal intrusion into local school decisionmaking.

Discussion: LEAs that serve only schools with poverty rates of 35 percent or more do, in fact, have more flexibility in allocating funds than other LEAs. Nevertheless, the statute does place certain requirements concerning the allocation of funds on all LEAs. Section 1113(a) of Title I requires that an LEA with more than 1,000 students rank its school attendance areas in order of poverty based on the percentage of children from low-income families in each area. Section 1113(c) requires an LEA to allocate funds to eligible school attendance areas or schools in rank order based on the number of children from low-income families. The Secretary believes that regulations are needed to clarify that an LEA serving only school attendance areas or schools with poverty rates of 35 percent or more has the flexibility to use an amount per poor child that the LEA deems appropriate and is not required to allocate an amount based on 125 percent of the LEA's allocation per poor child. However, for an LEA that serves any school with a poverty level under 35 percent, this provision applies to all its schools. The regulations further clarify that an LEA is not required to allocate the same amount per poor child to each participating school attendance area or school, provided that the LEA allocates higher amounts per poor child to areas or schools with higher concentrations of poverty than to areas or schools with lower concentrations of poverty.

Changes: None.

Comment: One commenter raised the issue that schools with similar allocations may need to spend different amounts because of variations in salaries and benefits of Title I staff. The commenter suggested that the regulations be modified to allow for the use of a pupil-teacher ratio instead of a funding ratio or to allow a 15 to 20

percent leeway among schools in the per-pupil allocation.

Discussion: Section 1113(c) of Title I requires that Part A funds be allocated to school attendance areas and schools based on the number of children from low-income families in each area or school. The provision assumes, for example, that two schools with the same number of poor children need similar amounts of funds to provide comparable education programs to participating children. The Secretary recognizes that an inequity may occur, however, if schools with similar allocations offering similar instructional programs need to spend different amounts due the salary and fringe benefit costs of the staff providing the instruction. To address this situation, the Secretary has issued guidance that allows an LEA to consider variations in personnel costs, such as seniority pay differentials or fringe benefits differentials, as LEA-wide administrative costs, rather than as part of the funds allocated to school attendance areas or schools. The LEA would pay the differential salary and fringe benefit costs from its administrative funds taken off the top of the LEA's Part A allocation. This policy would have to be applied consistently to staff serving both public and private school children throughout the LEA.

Changes: None.

Comment: One commenter noted that § 200.28 of the regulations does not specifically address the issue of variations in per-pupil amounts by grade spans.

Discussion: The Secretary has clarified this issue in guidance. An LEA opting to serve schools below 75 percent poverty using grade span groupings may determine different amounts per poor child for different grade spans as long as those amounts do not exceed the amount allocated to any area or school above 75 percent poverty. Amounts per poor child within grade spans may also vary as long as the LEA allocates higher amounts per poor child to areas or schools with higher poverty rates than it allocates to areas or schools with lower poverty rates.

Changes: None.

Comment: For LEAs that select eligible school attendance areas according to grade spans, a commenter recommended that the poverty percentage to determine eligibility be based on the districtwide average for the grade span rather than the overall districtwide poverty percentage.

Discussion: Section 1113(a)(4) of Title I allows an LEA, after ranking eligible attendance areas or schools above 75 percent, to rank its remaining eligible school attendance areas by grade span.

Sections 1113(a)(2) defines an eligible school attendance area as one in which the percentage of poor children is at least as high as the percentage of such children in the LEA as a whole. The Secretary has determined that it is reasonable to continue the flexibility contained in the current Chapter 1 regulations. Thus, an LEA may base school eligibility on (1) the overall poverty percentage for the LEA as a whole or (2) the districtwide poverty percentage for each grade span.

Changes: The Secretary has added § 200.28(a)(3) of the regulations, which permits an LEA that ranks its school attendance areas or schools at or below 75 percent poverty by grade span to determine the percentage of children from low-income families in the LEA as a whole for each grade span grouping.

Comment: One commenter noted that proposed regulations do not address how LEAs may handle carryover funds when allocating funds to school attendance areas.

Discussion: LEAs have considerable discretion in handling carryover funds. For example, an LEA may: (1) allow each school to retain its carryover funds for use in the subsequent year; (2) add carryover funds to the LEA's subsequent year's allocation and distribute to participating areas and schools in accordance with allocation procedures; or (3) designate carryover funds for particular activities that could best benefit from additional funding (examples: parental involvement activities or for schools with the highest concentrations of poverty). The Secretary has provided guidance to clarify this issue.

Changes: None.

Comment: A number of commenters raised issues concerning the within-district allocation of funds to provide for children residing in participating public school attendance areas but attending private schools. Virtually all of the comments focused on problems with the availability for the 1995-96 school year of adequate poverty data on those children. Because of the difficulty in obtaining reliable poverty data for private school children, several commenters suggested that there be a one-year delay in implementing the within-district allocation procedures and that the procedures used during the 1994-95 school year be used for one more year. Other commenters recommended that, if reliable poverty data on private school children residing in a participating school attendance area are not available, an LEA be allowed to apply the poverty percentage of public school children residing in the participating school attendance area to

the number of children from that attendance area attending private schools to determine a count of poor private school children.

Discussion: Under Part A of Title I, an LEA must distribute funds generally to participating school attendance areas based on the total number of children from low-income families residing in those attendance areas, including children from low-income families attending private schools. The level of services available for eligible private school children will be determined by the amount of funds generated by poor private school children residing in participating areas. The Secretary realizes that the collection of data needed to implement these provisions becomes complicated because many private schools do not participate in the free and reduced price lunch program, whose data will likely be used by most LEAs.

Section 200.28(a)(2) of the proposed regulations addressed this issue by making clear that, if poverty data are not available for private school children as are available for public school children, an LEA may use comparable data for private school children collected through an alternative means such as a survey. The Secretary has expanded this provision in the final regulations to also make clear that an LEA may use data from existing sources such as Aid to Families with Dependent Children or tuition scholarship programs. The Secretary has also added paragraph (a)(2)(iii), which provides that, if complete actual poverty data are not available on private school children, an LEA may extrapolate from actual data on a representative sample of private school children the number of poor private school children residing in a particular attendance area. For example, if parents of half the private school children who reside in a participating school attendance area respond to a survey and 50 percent of the private school children whose parents respond are poor, the LEA may project from this sample that 50 percent of the private school children residing in that attendance area are poor. The sample size should be large enough to draw a reasonable conclusion that the poverty estimate is accurate.

Even with this additional flexibility, however, an LEA may still not have adequate poverty data on private school children that it needs for the 1995-96 school year in time to make allocations to participating school attendance areas, complete the planning process with respect to services for both public and private school children, and submit timely plans to their SEA for approval.

Thus, for the 1995-96 school year only, an LEA that does not have adequate poverty data on private school children must apply the poverty percentage of each participating public school attendance area to the number of private school children in that area. For example, if a participating public school area has 50 percent poverty and 100 children who reside in that area attend private schools, 50 private school children would be deemed to be poor and thus generate Title I funds. For school years after 1995-96, actual poverty data (or a reasonable estimate based on an adequate sample) will be required.

.. The Secretary realizes that there may be issues about the adequacy of the poverty data available for private school children. These issues need to be resolved in consultation with private school officials. Because sampling would be permitted, an LEA would not need to have actual data on each private school child residing in a participating school attendance area for the data to be adequate. Moreover, to allay privacy concerns, an LEA does not need to collect or maintain the names of individual poor children attending private schools or signatures of their parents or guardians. In determining the adequacy of the data, an LEA should take into consideration factors such as the reliability of the data, the response rate, and whether the data are comparable to the data on public school children.

The Secretary urges public and private school officials to continue their efforts to collect actual poverty data for the 1995-96 school year, particularly in light of the flexibility to use sampling. To facilitate these efforts, SEAs and LEAs may wish to extend deadlines and amend applications, as necessary. Assuming adequate poverty data on private school children are not available for the 1995-96 school year, efforts to collect actual data should continue, because the alternative method requiring an LEA to apply the poverty rate for each public school attendance area to the private school children in that area will be allowed only for the 1995-96 school year.

Changes: Several changes have been made. The Secretary has added § 200.28(a)(2)(i)(B)(2) to make clear that an LEA may use data from existing sources such as Aid to Families with Dependent Children or tuition scholarship programs. The Secretary has also added paragraph (a)(2)(ii), which provides that, if complete actual poverty data on private school children are not available, an LEA may extrapolate from actual data on a representative sample

of private school children the number of poor private school children. Finally, the Secretary has added paragraph (a)(2)(iii) to require, for the 1995-96 school year only, an LEA that does not have adequate data on the actual number of private school children from low-income families under either paragraph (a)(2)(i) or (ii) to derive the number of those children by applying the poverty percentage of each participating public school attendance area to the number of private school children who reside in that area.

Comment: Several commenters recommended that § 200.28 of the regulations permit an LEA, in order to provide services to eligible private school children, to reserve an amount of funds that is proportionate to the number of children from low-income families who attend private school in the entire LEA compared to the number of children from low-income families who attend public schools in the LEA.

Discussion: The clear meaning of the statute requires an LEA to allocate Title I funds based on the number of poor private school children residing in participating public school attendance areas. Under section 1113(c)(1) of Title I, funds are allocated to participating school attendance areas "on the basis of the total number of children from low-income families in each area or school." The "total number of children from low-income families" includes both poor public and private school children residing in each public school attendance area. Consistent with this provision, section 1120(a)(4) of Title I requires expenditures for services to eligible private school children to be "equal to the proportion of funds allocated to participating school attendance areas based on the number of children from low-income families who attend private schools (emphasis added)." Determining the amount of funds available for services to private school children at the LEA level would be inconsistent with allocating funds to participating areas based on the number of poor public and private school children in each area.

Changes: None.

Comment: One commenter interpreted § 200.28 of the regulations to require only that the allocation of funds to school attendance areas be based on the number of children from low-income families from both public and private schools. According to the commenter, § 200.28 would allow an LEA to select and rank eligible attendance areas or schools based only on the number of public school poor children.

Discussion: Section 200.28 deals only with the allocation of funds to participating school attendance areas and schools and makes clear that funds must be allocated on the basis of the total number of children—public and private—from low-income families in each area or school. Thus, adequate data on the number of private school children from low-income families in participating school attendance areas is essential. To include numbers of private school children in identifying and selecting eligible school attendance areas and schools, however, would require adequate poverty data on private school children throughout the LEA. Because obtaining these data for the entire LEA may be extremely difficult, an LEA may identify and rank its eligible school attendance areas and schools on the basis of children from low-income families attending public schools only.

Changes: None.

Comment: Several commenters raised the issue of how private school children would be identified as residing in a participating attendance area if an LEA is operating under an open enrollment, a desegregation, or magnet school plan where there are no geographically defined attendance areas. A number of commenters recommended that the regulations allow LEAs to allocate Title I funds for poor private school children based on their relative share of the total population of public and private school children for the LEA as a whole.

Discussion: An LEA operating under an open enrollment, desegregation, or magnet school plan must still offer equitable services to eligible private school children. Determining which private school children are eligible, however, is often very difficult because it is not clear to which public school they would have gone were they not in a private school. Because of the wide variety of open enrollment arrangements, the Secretary was unable to fashion a regulation that would appropriately govern each situation. Rather, the Secretary will assist SEAs and LEAs on a case-by-case basis to design reasonable approaches that will allow for the provision of equitable services for eligible private school children.

Changes: The Secretary has added § 200.10(b)(2) to make clear that an LEA that identifies a school as eligible on the basis of enrollment because the school is operating, for example, under an open enrollment or desegregation plan, must determine an equitable way to identify eligible private school children.

Comment: Several commenters recommended that Title I expenditures

for private school children be set at 85 percent of the Title I amount spent on them in the previous year.

Discussion: The statute does not authorize a hold harmless for services to private school students based on the prior year's expenditures.

Changes: None.

Subpart C—Migrant Education Program

Section 200.40 Program Definitions

Comment: One hundred and sixty-seven letters were received objecting to the proposal to require that, to be a migratory agricultural worker or fisher, temporary or seasonal employment in an agricultural or fishing activity must be a "principal means of livelihood." Most of the commenters on this issue read into the proposed language a requirement that, for a child to qualify for services under the Migrant Education Program (MEP), the child's parents or guardians either must derive the majority of their income from, or spend the majority of their time performing, agricultural or fishing activities. Most of the commenters were concerned that the proposed language imposed a specific recordkeeping burden on migratory workers. Specifically, they believed that, for a child to be determined eligible under the MEP, his/her parent or guardian now would be required to maintain, and produce for inspection by State and local MEP staff, records documenting the percentage of time or income associated with their agricultural or fishing work.

Many commenters also suggested that the proposed language would place an unreasonable burden on local MEP staff, by requiring them to make subjective determinations of eligibility based on review of parents' income or occupational history records. Several commenters noted that these determinations would vary from place to place and from MEP staff member to staff member.

While the majority of commenters suggested eliminating the proposed language, several commenters suggested that the Secretary should clarify the proposed language and/or issue clear guidance on how to determine whether a migratory worker's agricultural or fishing work constitutes "a principal means of livelihood."

Discussion: The commenters have misinterpreted the scope and intent of the proposed language regarding what constitutes "a principal means of livelihood." As noted in the preamble to the NPRM, the Secretary proposed this language to better focus MEP service on children of persons with an actual,

significant dependency on migratory agricultural or fishing work.

The Secretary never intended the proposed language to mean that agricultural or fishing activities had to constitute the principal means of livelihood for a worker. That is to say, this work need not be the only type of work performed by a worker during the year, nor the one which provides the largest portion of income or which employed the worker for a majority of time. Additionally, the Secretary never intended the proposed language to require a worker or his or her family to maintain, or an SEA or operating agency to review, written documentation on income or work history as a condition of determining the eligibility of children for the MEP.

With regard to the concern about the burden the proposed language might place on State and local MEP staff, the Secretary believes that it is necessary for SEAs and operating agencies receiving MEP funds to determine that children eligible for the MEP are those for whom temporary or seasonal employment in an agricultural or fishing activity constitutes an important part of their families' livelihood. However, this determination should be no more difficult than the determinations currently made by State and local MEP staff regarding the reasonableness of other eligibility information provided by a parent or guardian as to work activities and mobility. State and local officials responsible for determining MEP eligibility often rely on oral information from parents, guardians, as well as employers and others regarding a move to seek or obtain seasonal agricultural or fishing employment. State and local MEP staff currently use their best judgment regarding the accuracy of this information, especially in cases where agricultural or fishing work was sought but not found. The Secretary's interpretation of eligibility requirements under the MEP will continue to permit reliance on any credible source, without the need to secure written documentation from a parent or guardian. The Secretary only intends, with this new eligibility requirement, that State and local staff be reasonably assured that, in view of a family's circumstances, it is sensible to conclude that temporary or seasonal employment in an agricultural or fishing activity is one important way of providing a living for the worker and his or her family.

Changes: In order to clarify the meaning of the new language, the Secretary has revised the regulatory definition in § 200.40(f) of the regulations to clarify that the term

"principal means of livelihood" as used in § 200.40 (c) and (e) of the regulations means that "temporary or seasonal employment in an agricultural or fishing activity plays an important part in providing a living for the worker and his or her family." The Secretary will issue guidance regarding how SEAs and their operating agencies may exercise flexibility in the ways in which they identify and recruit migratory children consistent with this regulatory requirement.

Comment: Thirty-four commenters noted that the "principal means of livelihood" language included in the proposed MEP regulatory definitions was not found in the statute. Seven commenters suggested that the inclusion of this language in the regulations would violate the Department's principles for regulating insofar as the proposed language was not absolutely necessary and/or contrary to the intent of the statute to give flexibility to States and local operating agencies in implementing the new statute.

Discussion: The Secretary believes that the proposed language regarding "principal means of livelihood" is a necessary addition to the longstanding definitions of "migratory agricultural worker" and "migratory fisher" and, therefore, conforms to the Department's regulatory principles. Because the existing definitions had been frozen by prior statutes, children have been identified and served as migratory children simply because they moved with or to join a parent or guardian who, though having another full-time occupation, indicated that he or she moved across a school district line to perform, however briefly, an agricultural or fishing activity. ESEA has removed this statutory freeze. Continuing to allow children to be served as migratory children on the basis of a purely technical application of the definition would perpetuate an injustice against those children whose lives are disrupted by moves made because their families are truly dependent, to a significant degree, on temporary or seasonal agricultural or fishing activities. In this way, the Secretary continues to believe that this change in the MEP definitions is absolutely necessary.

Changes: None.

Comment: None.

Discussion: In order to conform to the statutory language, the Secretary has revised the definition of a "migratory child" in § 200.40(d) by replacing the term, "has moved," in subsection (3) with the term, "migrates."

Changes: Section 200.40(d)(3) is changed accordingly.

Comment: None.

Discussion: The second sentence of the definition of a "migratory fisher" in § 200.40(e) notes that the definition also includes a person who resides in a school district of more than 15,000 square miles, and moves a distance of 20 miles or more to a temporary residence to engage in a fishing activity. As purely an editorial clarification, the Secretary has revised this sentence to read, "This definition also includes a person who, in the preceding 36 months, resided in a school district of more than 15,000 square miles, and moved a distance of 20 miles or more to a temporary residence to engage in a fishing activity as a principal means of livelihood."

Changes: Section 200.40(e) is changed accordingly.

Section 200.41 Use of Program Funds for Unique Program Function Costs

Comment: Two commenters addressed this section of the proposed regulations. Both commenters agreed that it was appropriate to use program funds to address those administrative functions that are unique to the MEP; however, one commenter questioned why the proposed regulation also mentioned the use of program funds for "administrative activities * * * that are the same or similar to those performed by LEAs in the State under subpart A." This commenter suggested deleting the language or providing examples of what these activities might include.

Discussion: The MEP is a State-operated as well as a State-administered program. In cases where it directly operates aspects of the program, rather than having local operating agencies do so, an SEA has to perform the same kind of administrative activities that an LEA carries out when it administers a project under subpart A. While these activities could be described as unique to the nature of the MEP, the Secretary believes deleting the term, which has been in the prior regulations, would create unnecessary confusion about the scope of permissible uses of funds under § 200.41 of the regulations. Instead, the Secretary has decided to make minor modifications to clarify that those "administrative activities * * * that are unique to the MEP" include "administrative activities * * * that are the same or similar to those performed by LEAs in the State under subpart A." The list of permissible activities has also been expanded to include an example of this type of administrative activity.

Changes: Section 200.41 is changed accordingly.

Section 200.42 Responsibilities of SEAs and Operating Agencies for Assessing the Effectiveness of the MEP

Comment: Two commenters addressed this section of the proposed regulations. One commenter agreed with the proposed language. The other commenter noted that the schoolwide program requirements in § 200.8 of the regulations do not require the identification of particular children as eligible to participate, and questioned how an operating agency can meet its responsibility under § 200.42 of the regulations to evaluate the effectiveness of how a school within the agency which combines MEP funds in a schoolwide program serves migratory children.

Discussion: The commenter misconstrues the applicable provisions of § 200.8, regarding schoolwide programs. While § 200.8(f)(1) does not require a schoolwide program to identify particular children as eligible to participate (emphasis added), a schoolwide program will have to identify a given child in terms of needs. This is necessary in order for the school to meet other schoolwide program requirements to (1) employ instructional strategies which address the needs of children who are members of the target population of any program whose funds are included in the schoolwide program [§ 200.8(d)(2)(iv)(A)]; and 2) address the identified needs of migratory children specifically, and document how these needs have been met in the schoolwide program [§ 200.8(c)(3)(ii)(B)(1)]. A schoolwide program is also required, under § 200.8(e)(1)(iv)(A)(2), to disaggregate assessment data according to specific categories, including migrant status. In this way, a schoolwide program which includes MEP funds will be able to meet the requirements of § 200.42 to determine the effectiveness of the program for migratory students.

Changes: None.

Section 200.44 Use of MEP Funds in Schoolwide Programs

Comment: Nine comments were received regarding the inclusion of MEP funds in schoolwide programs. Seven of the commenters expressed support for the continued inclusion of the proposed language in § 200.8(c)(3)(ii)(B)(1) of the regulations. As developed through the negotiated rulemaking process, this subsection requires schoolwide programs to (1) first address, in consultation with parents and other representatives, or both, of migratory children, the identified needs of those children that result from the effects of their migratory lifestyle or are needed to

permit them to function effectively in school; and (2) document that services to address those needs have been provided. One commenter expressed concern that the special needs of migratory children will not be addressed in a schoolwide program without a requirement to "identify and document the services that supplemented the regular academic program." Another commenter suggested that the language of § 200.8(c)(3)(ii)(B) of the regulations was too vague and flexible, and would "allow school districts to evade the intentions of Congress."

Discussion: The Secretary continues to believe that the language in § 200.8(c)(3)(ii)(B)(1) of the regulations, as drafted in negotiated rulemaking, provides an adequate safeguard that the special needs of migratory children will be addressed in schoolwide programs. In particular, subsection (1)(B) requires that schoolwide programs document that services have been provided to address the identified needs of migratory children. The Secretary continues to believe that it is neither necessary nor desirable—and, in fact, is contrary to the purpose of schoolwide programs—for schoolwide programs to have a requirement to demonstrate that services provided using Federal funds, e.g. MEP funds, combined under the schoolwide program authority supplement the services regularly provided in that school.

Changes: None.

Subpart D—Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk of Dropping Out

Comment: One commenter indicated that the regulations do not adequately address many of the statutory changes, particularly as they relate to prevention and intervention. The commenter suggests organizing the regulations into State agency and locally operated program categories.

Discussion: In developing regulations for programs authorized by Title I, the Department sought to regulate only where absolutely necessary, and when regulating, to promote flexible approaches to meeting the requirements of the law. The Secretary believes that the statute provides sufficient direction to State agencies (SAs) and local educational agencies (LEAs) operating Part D subpart 1 and 2 programs for children and youth who are neglected, delinquent, or at-risk of dropping out and does not require regulations. The Department, however, is developing more detailed guidance to help SAs and LEAs design programs that meet the

needs of this population. This guidance will be organized to provide guidance related specifically to the Part D, Subpart 1 State agency N or D program and the Subpart 2 local agency program.

Changes: None.

Comment: For the Part D, Subpart 2 local agency program, a commenter asked for clarification about the distinction in funds and services between delinquent and at-risk children and youth. The commenter further asked if LEAs may reserve a portion of their funds for at-risk students who have not been adjudicated delinquent or must LEAs use those funds only for delinquent youth transferring from institutions into the district's schools.

Discussion: LEAs must use a portion of its Title I, Part D, Subpart 2 funds to operate a dropout prevention program for at-risk youth in local schools in the LEA. At the same time, the LEA must also use some of its Subpart 2 funds for programs that will serve children and youth in locally operated correctional facilities and in locally operated institutions or community day programs for delinquent children and youth in accordance with the requirements in section 1425 of Title I.

The statute, however, provides that if more than 30 percent of the children or youth in a local correctional facility or delinquent institution within an LEA do not reside in the LEA after leaving the facility or institution, the LEA is not required to operate a dropout prevention program in a local school.

Changes: None.

Comment: One commenter expressed concern about the low status of "prison education," particularly in his State, where the lack of support for juvenile institutions has reduced both the number and the quality of course offerings and has relegated correctional education to a supplemental or support role. The commenter indicated that there should be more recognition of the status of correctional education and hopes that the Title I program in these institutions will help N or D children and youth attain the high standards expressed in Goals 2000 and State school reform initiatives.

Discussion: The Secretary expects consolidated State plans for ESEA programs or individual State plans for Part D funds to provide an overall plan for meeting the needs of N or D children and youth and, where applicable, youth at-risk of dropping out of school that is integrated with the State's other educational programs.

Changes: None.

Comment: One commenter expressed concern that section 1603 of Title I does not require that the membership of the

State's Committee of Practitioners include a representative from State agencies (SAs) operating N or D institutions.

Discussion: Section 1603 of Title I requires that the Committee of Practitioners review and comment on all proposed rules, regulations, and policies relating to programs authorized in Title I, including Part D. The Secretary expects that a representative from SAs operating Title I N or D programs will be included on the Committee of Practitioners so it can address issues related to the State agency N or D program.

Changes: None.

Comment: A commenter noted that the regulations do not address how an SEA awards Part D, Subpart 2 grants to LEAs with high numbers or percentages of youth residing in locally operated correctional facilities for youth (including institutions and community day programs or schools that serve delinquent children and youth).

Discussion: The SEA has flexibility in establishing the criteria used to determine which LEAs have high numbers or percentages of children and youth in local correctional facilities or institutions and community day programs for delinquent children. Once an SEA determines which LEAs are eligible, the SEA may award Part D, Subpart 2 subgrant to eligible LEAs through a formula or on a discretionary basis.

Changes: None.

Section 200.50 Program Definitions

Comment: One commenter expressed concern that the definition for locally operated correctional facility does not include institutions or community day programs that serve neglected children and that the Part D, Subpart 2 local agency program does not address the educational needs of these neglected children.

Discussion: The specific educational needs of neglected children are met through several Title I programs. The State agency N or D program, authorized in Part D, Subpart 1 of Title I, serves the needs of neglected children in State-operated or supported institutions or community day programs. Part A, section 1113 of Title I requires that an LEA receiving Title I funds reserve funds to meet the educational needs of children in local institutions for neglected children. If the LEA is unable or unwilling to provide services to children in local institutions for neglected children, the State educational agency must reduce the LEA's allocation by the amount generated by the neglected children and

assign those funds to another agency or LEA that agrees to assume educational responsibility for those children.

Changes: None.

Section 200.51 SEA Counts of Eligible Children

Comment: One commenter strongly supported the change requiring the use of enrollment rather than average daily attendance.

Discussion: Section 200.51 of the regulations follows the statute, which requires that counts used for allocating Part D, State agency N or D funds be based on the number of children and youth under aged 21 enrolled in a regular program of instruction for 20 hours per week if in a institution or community day program for N or D children and youth and 15 hours per week if in an adult correctional facility.

Changes: None.

Comment: One commenter objected to requirements in the proposed regulations that State agency N or D allocations be based on counts of children enrolled in a regular program of instruction for 20 hours per week if in an institutions or community day program for N or D children; and only children and youth in institutions with an average length of stay of 30 days or more can be counted. The commenter argued these requirements will result in an under count of the children and youth that State institutions serve and does not take turnover into account.

Discussion: The criteria that children be enrolled in a regular program of instruction for 15 or 20 hours of instruction per week, depending on the type of institution, reflect statutory requirements. The statute, however, addresses the issue of turnover in part by requiring that enrollment be adjusted to take into consideration the relative length of the program's school year.

Although short-term institutions such as detention, diagnostic, and reception centers provide basic education services for youth, the Secretary believes that Title I services are most effective when their duration is longer and is requiring in regulations that the average length of stay in institutions and programs eligible for Title I funds average at least 30 days.

Changes: None.

Subpart E—General Provisions

Section 200.60 Reservation of Funds for State Administration and School Improvement

Comment: One commenter argued that Congress appropriated fiscal year 1995 funds specifically for School Improvement as a limitation or cap on

the amount that could be spent by States for this activity in the same manner that Congress provided funds specifically for State Administration in prior years. According to the commenter, the line item appropriation, therefore, provides the entire amount that may be expended for school improvement activities for 1995-96, and SEAs have no authority to reserve any additional funds for that purpose from their allocations under sections 1002 (a), (c), and (d) of Title I in 1995-96.

Discussion: In the 1995 Appropriations Act (P.L. 103-333), Congress appropriated funds for activities authorized by Title I and specifically provided \$27,560,000 for "program improvement activities." Because the ESEA had not been enacted at the time P.L. 103-333 became law, these funds were not appropriated under the authority in section 1002(f) of Title I. However, legislative history accompanying the 1995 Appropriations Act (Senate Report 318, p. 177) indicates that Congress provided a specific amount for program improvement grants with the knowledge that the Senate ESEA bill, S. 1513, also authorized each State to reserve a portion of its Title I LEA and State agency grants for school improvement. Thus, the Secretary believes that Congress intended to provide funds for school improvement as a separate line item and still allow States to reserve additional funds under sections 1003 (a), (c), and (d) from its LEA and State agency grants.

Changes: None.

Section 200.61 Use of Funds Reserved for State Administration

Comment: One commenter believed § 200.61 of the regulations should be expanded to address the use of funds reserved for school improvement. The commenter recommended that any alternative system established by the State should be addressed in its State plan and thereby subject to peer review. The commenter argued that States may be tempted to use school improvement funds to support SEA staff costs that should otherwise be funded with State Administration funds.

Discussion: The Secretary believes that sections 1116 and 1117 of Title I adequately address how States must use school improvement funds. States are expected to address in individual State plans how they will monitor LEA school improvement activities, provide technical assistance, identify LEAs in need of school improvement assistance, take necessary corrective action, and establish a State school improvement support system.

Changes: None.

Comment: One commenter asked what the phrases "any of the funds" and "general administrative activities" mean in § 200.61 of the regulations.

Discussion: Section 200.61 of the regulations provides that an SEA may use any of the funds it has reserved under § 200.60(a) to perform general administrative activities necessary to carry out, at the State level, any of the programs authorized under Title I. This authority, provided under section 1603 of Title I, is very broad and includes activities that the SEA considers necessary to the proper and efficient performance of its duties under Title I. Such activities may, for example, include reviewing plans submitted by LEAs and State agencies, monitoring program activities at the local level, providing technical assistance, and developing rules and policy guidance needed to implement the law.

Changes: None.

Subpart E—General Provisions

Comment: One commenter strongly supported the language in § 200.63 of the regulations concerning the supplement, not supplant requirement and believed that it clarifies the language of the Title I statute. Another commenter suggested that the regulations further clarify section 1120A(b)(1)(B) of Title I pertaining to the exclusion of supplemental State and local funds from supplement, not supplant determinations, given the likelihood of unintended noncompliance in the near future.

Discussion: Although the Title I legislation on the exclusion of supplemental State and local funds from Title I supplement, not supplant and comparability determinations is different from that in the Chapter 1 legislation, the Secretary believes that the statutory language does not need further clarification beyond that contained in § 200.63(c) of the regulations. To the extent additional clarification becomes necessary, the Department will provide it in policy guidance.

Changes: None.

Comment: One commenter suggested that § 200.65 of the regulations include definitions of terms and requirements that are not clearly described in the statute so that wide variation in State and local interpretation does not result. The commenter suggested that States and LEAs need examples or minimum standards that can be used to interpret and measure terms such as "joint development," "comprehensive needs assessment," "adequate progress,"

"high quality," "sufficient," and "compacts".

Discussion: The Secretary believes that including specific definitions of these terms in the regulations would lessen State and local flexibility. To the extent clarification is needed, the Department will include it in policy guidance.

Changes: None.

Comment: One commenter suggested that sections 14401 and 14501 of Title XIV regarding ESEA waivers and maintenance of effort waivers, respectively, appear contradictory; under section 14401, maintenance of effort may not be waived yet under section 14501, the Secretary has the authority to waive maintenance of effort under certain circumstances.

Discussion: Because section 14501 contains specific maintenance of effort provisions, including the authority to waive those provisions under certain circumstances, that section takes precedence over the general waiver provisions in section 14401. Thus, the Secretary may waive maintenance of effort requirements under programs covered by section 14501, if the jurisdiction meets the statutory criteria for a waiver. If a jurisdiction does not meet those criteria or is not covered under section 14501, the Secretary may not waive maintenance of effort under section 14401.

Changes: None.

Comments on Issues Not Addressed in Final Regulations

Comment: One commenter requested that the Secretary specify a date by which an SEA must distribute its plan to its LEAs (suggesting July 1, 1995) and further specify that the draft plan and final plan be made public, stressing that, because of the LEAs' heavy reliance on the SEA plan, it is imperative that LEAs have access to the SEA plan for review prior to the plan becoming final.

Discussion: The Secretary agrees that an SEA must adequately communicate with its LEAs. In fact, the SEA must consult with LEAs, teachers and other school staff, and parents in developing its State plan. Given the variation among States, however, the Secretary does not believe establishing a national "due date" would be appropriate.

Changes: None.

Comment: One commenter recommended that regulations be added to address the provisions of section 1115(b) of Title I that are designed to ensure that students with educational needs are not excluded on the basis of English proficiency, family income, disability, or migrant status. The commenter found that many LEP

students were inappropriately excluded from Chapter 1 participation.

Discussion: Section 1115(b)(2) makes clear that children who are economically disadvantaged, children with disabilities, migrant children, and LEA children are eligible for services under Part A on the same basis as other children selected to receive services. The Secretary does not believe that regulations are needed to enforce this statutory provision.

Changes: None.

Comment: One commenter recommended that the regulations encourage the use of technology to increase learning, parental involvement, and professional development and cited the Conference Report on the legislation, which states: "The conferees intend to allow maximum flexibility for the use of funds under this Act to encourage schools to think of new ways to use technology to expand the learning day in the home, increase parental involvement with their children's education, and provide readily accessible professional development for teachers and staff."

Discussion: As reflected in the Improving America's Schools Act (IASA), the use of technology is certainly strongly encouraged. Because the design of Title I programs is a responsibility of schools and LEAs, however, the Secretary believes it is inappropriate to regulate on this issue.

Changes: None.

Comment: One commenter expressed concern that parental involvement is hardly addressed in the regulations. Specifically, because LEA and school-level parent involvement policies must be developed jointly with and agreed upon with parents, the commenter suggested that the terms "joint

development" and "agreement" be defined in the regulations. Two commenters also suggested that the regulations specify the manner in which these activities are to be carried out to ensure that (1) parents and school system personnel can understand concretely the steps for implementing the provisions; and (2) the parental involvement policies provide the SEA and LEA with sufficient information to enable them to determine that the policies are fully adequate to meet the statutory requirements. The commenters also recommended that the regulations make clear that the SEA and LEAs are responsible for ensuring that the parent involvement policies and processes are sufficient to meet Title I's parent involvement requirements.

One commenter suggested that the regulations provide additional clarification regarding school-parent compacts, specifying that the compact must be agreed upon, through informed consent, by parents as part of the school-level parent involvement policy. The commenter also asked that the regulations contain qualifying language providing that nothing in the school-parent compact section shall permit school officials to limit or deny families' rights to privacy and to determine the upbringing of their children. The commenter also suggested that the regulations connect parental involvement sections with other related sections so that parent involvement provisions are not used in isolation.

One commenter strongly supported the terms "broad-based" and "throughout the planning process" that are contained in the provisions related parental involvement in the development of the State plan and suggested the same language be added

in the regulations with respect to parent involvement in local plan and policy development. Another commenter recommended that the regulations outline a framework for parent involvement as described in section 1118 of Title I and, in addition to repeating the statute, expand on the newer parent involvement provisions such as "Shared Responsibilities for High Student Performance" and "Building Capacity for Involvement."

Discussion: The Secretary strongly agrees that parental involvement is essential for the education of children; the many detailed statutory provisions on parental involvement reflect this belief. Because the statute is very detailed, however, the Secretary does not believe additional regulations are necessary.

Changes: None.

Comment: Two commenters noted that the regulations did not contain complaint procedures. One commenter offered very detailed language to be added. The other commenter expressed concern that, without complaint procedures, many low-income parents would have nowhere to turn to attempt to redress individual and systemic wrongs, and also that LEAs and schools would receive a message that compliance is not important.

Discussion: The Secretary will be issuing in the near future proposed regulations implementing Title XIV of the ESEA and covering other general areas. These proposed regulations will contain provisions on complaint procedures that would apply to Title I.

Changes: None.

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